United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-1576

United States Court of Appeals

For the Second Circuit

B P/S

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

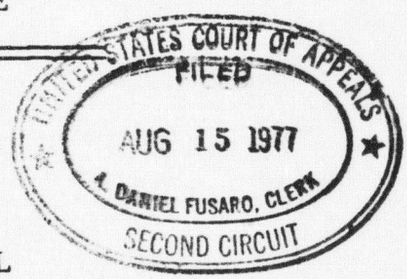
v.

JAMES F. HEIMERLE and
RICHARD G. WARME,

Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX OF DEFENDANTS-APPELLANTS JAMES F. HEIMERLE and RICHARD G. WARME



Volume I
Pages A-1 to A-164

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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES - JAMES F. HEIMERLE

PETTY OFFENSE PO
OTHER MINOR OFFENSE MO
OTHER MISDEMEANOR Mis
FELONY Fel X

JUDGE/MAGISTRATE Assigned: 0208 1 (District / Office) 0848 (Disp./Sentence)

U.S. vs HEIMERLE, JAMES F. (LAST FIRST MIDDLE)

JUVENILE

Docket No. 04 29 | 76 0442 01 | Yr | Docket No. | Def.

No. of Defs. 04

U.S. MAG. CASE NO.

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:371	Consp. to deal in counterfeit.	1
18:473	Dealing in counterfeit.	2-4

11/22

SUPERSEDING COUNTS

Denied | Asst | Fugitive | Set | Pers. Recog | FSA | $ | Conditions | Date | 10% Deposit | Surety Bond | Bail Not Made | Collateral | Status Changed/See Docket | 3rd Pty Cust. | Other

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT X	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began: 2-29-76	High Risk Date / Information	5-11-76	Trial Set For: 9-27-76 ✓	10-1-76 ✓ 10-15-76
Conditions Served	Indict. Waived	5-11-76	9-27-76	
Initial Appearance	In Charging District: Superseding Indict. Filed X 4-29-76	Final Plea	Trial Began: 10-1-76	

MAGISTRATE

	DATE	INITIAL NO.
Search Warrant: Issued / Return		
Summons: Issued / Served		
Arrest Warrant Issued		
COMPLAINT ▶		
OFFENSE (In Complaint)		

INITIAL APPEARANCE DATE ▶ | INITIAL NO.

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled ▶ / Date Held ▶

WAIVED / NOT WAIVED

INTERVENING INDICTMENT

Rule 20 | Rule 21 | Rule 40 | Rule 5(c)(3)

HELD FOR GRAND JURY OTHER PROCEEDING IN THIS DISTRICT

HELD FOR GRAND JURY OTHER PROCEEDING IN ANOTHER DISTRICT

Case Number

U.S. Attorney or Asst.

ATTORNEYS Defense ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other ☐ FD ☐ CD

Alan R. Naftalis
791-1156

* Show last names and suffix numbers of other defendants on same indictment/information.

Warme-2, Horowitz-3., Peters-4.

DATE	(DOCUMENT NO.) PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
4-29-76	Filed indictment.	
	Superseding indictment 76 Cr 243 and referred to Judge Pollack.	
05-11-76	Deft. (atty. Michael Pollack present) Pleads not guilty. Bail of $50,000. fixed in 76 Cr. 146 by Judge Metzner to cover this indictment. Deft. remaded in lieu of bail totalling $75,000. Pollack,J.	
05-14-76	Pre-trial before Pollack,J.	2 5-14-E 1
07-1-76	Pre-trial before Pollack,J.	2 7-1- E 1
07-12-76	Filed Govt's notice of readiness for trial.	
08-04-76	Filed Afdt. for w/h/c, ad-pros. directed to the Warden of Atlanta Federal Penitentiary. Ret. 08-16-76.	
09-22-76	Filed one envelope ordered sealed and impounded and placed in vault in room 66G. Palimieri,J.	
09-27-76	Deft. (atty. Michael Pollack) jury trial begun. Pollack,J.	
09-28-76	Trial cont'd.	
09-29-76	Trial cont'd.	

FORM AO 256

Docket Entries - James F. Heimerle

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

PAGE TWO

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (Start Date End Date (b))	(Ln Code (c))	(Total Days (d))
09-30-76	Trial cont'd.			
10-01-76	Trial cont'd. & concluded. Partial verdict. Deft. found guilty on ct. 1. Jury disagreement as to cts. 2,3, & 4. Mistrial declared as to cts. 2,3 & 4. Jury discharged. Pre-sentence report ordered. For sent. 11-15-76 at 10AM. room 518. Deft. cont'd. remanded. Pollack,J.			
10-21-76	Filed deft's motion re: set aside verdict.			
10-21-76	Filed memo-end. on motion docketed this date. the motion is denied. Pollack,J. m/n			
11-03-76	Filed Order that the notice sealed on 9-21-76 be forwarded to Judge Pollack to be unsealed,etc. Palmieri,J. m/n			
11-11-76	Filed Order to Show Cause re: contempt of court of Michael Pollack with regard to 3500 material. ret: 11-22-76 room 518 at 10AM. Pollack,J.			
11-11-76	Filed Govt's affdvt. re: support of show cause order			
11-15-76	Filed Govt's noticere: Dangerous Special Offender.			
11-15-76	Filed Govt's memo. of law re: support of notice.			
11-15-76	Filed deft's memo. of law re: Special Offender,etc.			
11-16-76	Filed transcript of record of proceedings, dated Sept. 17 1976 # 77,025			
11-15-76	Filed Judgment (atty. Michael Pollack) Ct. 1 pursuant to 18:371 and as a Dangerous Special Offender pursuant to 18:3575 for a term of 10 yrs. Sent. to run consecutive to the sent. of impr. imposed by Metzner,J. on 6-15-76 on 76 Cr. 146 and consecutive to any confinement that may be imposed hereafter for viol. of prob. imposed by Brieant,J. on 72 Cr. 1331 -AND- FINED $10,000. committed fine. Cts. 2,3 and 4 dismissed on deft's motion. Pollack,J. issued all copies issued all copies			
11-22-76	Filed deft's notice of appeal from judgment of 11-15-76. Mailed to deft. & U.S. Atty.			

LETTER CODE:

A Transportation or hearing on motions of [illegible] Likely to Use [illegible]

B NARA Examination [illegible] U.S.C. 2902

C State or Federal trials on other charges

D Interlocutory Appeals

E Hearings on pretrial motions

F Transfers from other districts (per F.R.Cr.P. Rules 20, 21 & 40)

G Defendant Motion to actively under advisement period of up to 30 days is excludable per 3161(h)(1)(J)

H Miscellaneous Proceedings Probation or Parole revocation, Deportation, Extradition

I Prosecution deferred by mutual agreement

M Unavailability of defendant or essential witness

N Period of mental or physical incompetence of defendant to stand trial

O Period of NARA Commitment or Treatment

P Superseding indictment and/or new charges

R. Defendant awaiting trial of Co-defendant when no severance has been granted

T. Continuances Granted per 3161(h)(8) (i.e. ends of justice or complexity of case outweighs defendants interests)

U Time between guilty plea and plea withdrawal.

W Grand Jury indictment extended per 3161 (b)

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

DOCKET ENTRIES - RICHARD G. WARME

JUDGE/MAGISTRATE Assigned: 0208 1 0348 — Dist. Sentence

vs WARME, RICHARD G., a/k/a Richard Warner

(LAST, FIRST, MIDDLE)

Case Filed (Mo. Day): 04 29 — JUVENILE — No. of Defts: 04

76 0442 02 (Yr. | Consec. No. | Def.)

U.S. MAG CASE NO.

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:371	Consp. to deal in counterfeit.	1
18:473	Dealing in counterfeit.	2-4

UNITED STATES COURT OF APPEALS FILED DEC 16 1976 A. DANIEL FUSARO, CLERK SECOND CIRCUIT

BAIL • RELEASE: Denied / Amt Set $ ___ / Fugitive / Pers. Recog. / PSA / Date / Surety Bonds: 10% Deposit, Surety Bond, Collateral, 3rd Party Cust., Other / Bail Not Made / Status Changed (See Docket)

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began: 2-29-76 — High Risk Date — Summons Served — First Appearance — In Charging District

INDICTMENT / Information — Indict. Waived — Superseding Indict/Info 4-29-76

ARRAIGNMENT — 1st Plea — Final Plea

TRIAL — Trial Set For — NG G NOL — G. Plea Withdrawn — NG G NOL — Voir Dire — Trial Began — Trial Ended

SENTENCE — Disposition of Charges — Convicted / Acquitted / Dismissed: WOP WP / On Government's Motion — On All Charges / On Lesser Offense(s)

MAGISTRATE

	DATE	INITIAL/NO.
Search Warrant: Issued / Return		
Summons: Issued / Served		
Arrest Warrant Issued		
COMPLAINT		
OFFENSE (Complaint)		

INITIAL APPEARANCE DATE — INITIAL/NO.

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled / Date Held

WAIVED / NOT WAIVED

INTERVENING INDICTMENT

Tape Number

OUTCOME: DISMISSED / HELD FOR G.J. OR OTHER PROCEEDING IN THIS DISTRICT / HELD FOR G.J. OR OTHER PROCEEDING IN DISTRICT BELOW

ATTORNEYS — Defense: CJA Ret. Waived Self Name / Addr. PD CO

U.S. Attorney or Asst.

Alan R. Naftalis
791-1156

-1347

Show last names and Suffix numbers of other defendants on same indictment/information

Heimerle-1, Horowitz-3; Peters-4.

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
4-29-76		Filed indictment.	
		Superseding indictment 76 Cr 243 and referred to Judge Pollack.	2 5-14 E 1
05-14-76		Pre-trial before Pollack,J.	2 7-1 E 1
07-1-76		Pre-trial before Pollack,J.	
07-12-76		Filed Govt's notice of readiness for trial.	
09-17-76		Deft. (atty. Jeffrey Weingard) hearing begun and concluded on motion to suppress- motion denied. Pollack,J.	2 9-17 E 1
09-27-76		Deft. (atty. Jeffrey Weingard) jury trial begun before Judge Pollack.	
09-28-76		Trial cont'd. Deft. not present b/w order. Bail revoked. 2:15. b/w vacated. Deft. present. Bail reinstated.	
09-29-76		Trial cont'd.	
09-30-76		Trial cont'd.	
10-01-76		Trial cont'd. and concluded. Jury disagreement as to Cts. 2,3 & 4. Deft. found guilty on ct. 1. Mis-trial declared as to cts. 2, 3 & 4. For sent. 11-15-76.	

A

Docket Entries - Richard G. Warme

CIRCLE THE APPLICABLE DOCKET ENTRIES SHOWN IN SECTION V. ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

DATE	IV. PROCEEDINGS (continued) PAGE TWO	V. EXCLUDABLE DELAY
11-16-76	Filed Judgment (atty. Jeffrey Weingard) Ct. 1- 3 yrs. impr. Cts. 2,3 and 4 aredismissed upon motion of deft. Deft. remanded in lieu of bail pending appeal fixed at $20,000. Pollack,J.. issued all copies	
11-17-76	Filed deft's notice of appeal from Judgment of 11-16-76. Mailed copies to deft & US Atty.	

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By _____ Deputy Clerk

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-v- : INDICTMENT

JAMES F. HEIMERLE, : 76 Cr. 442
RICHARD G. WARME,
a/k/a Richard Warner, :
BERNARD HORWITZ AND
JOSEPH PETERS, : :

Defendants. :

----------x

COUNT ONE

The Grand Jury charges:

1. From on or about November 1, 1975, up to and including February 29, 1976, in the Southern District of New York and elsewhere, JAMES F. HEIMERLE, RICHARD G. WARME, a/k/a Richard Warner, BERNARD HORWITZ, and JOSEPH PETERS, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with Frederick Glock and Angelo Oliveri, deceased, named herein as co-conspirators, but not as defendants, and with other persons, to the Grand Jury known and unknown, to violate Section 473 of Title 18, United States Code.

2. It was a part of said conspiracy that said defendants and their co-conspirators unlawfully, wilfully and knowingly, would buy, sell, exchange, transfer, receive and deliver false, forged, counterfeited and altered obligations and other

securities of the United States, to wit, twenty dollar, fifty dollar and one hundred dollar Federal Reserve Notes, with the intent that the same be passed, published and used as true and genuine.

Overt Acts

3. In furtherance of said conspiracy and to effect the objects thereof, the defendants and their co-conspirators committed and caused to be committed the following overt acts, among others, in the Southern District of New York and elsewhere.

a. In November, 1975 the defendants JAMES F. HEIMERLE and JOSEPH PETERS met.

b. In or about December, 1975 the defendants RICHARD G. WARME, JOSEPH PETERS and BERNARD HORWITZ drove to Kennedy Airport, Queens, New York.

c. On or about December 10, 1975, the defendant RICHARD G. WARME gave defendant BERNARD HORWITZ a counterfeit $100 Federal Reserve Note.

d. In or about December, 1975 the defendant BERNARD HORWITZ traveled to Las Vegas, Nevada from Queens, New York.

e. In or about January, 1976, the defendant RICHARD G. WARME, met with co-conspirator Frederick Glock in the Bronx, New York.

f. Between December 1975 and January 1976, the defendants JAMES F. HEIMERLE, RICHARD G. WARME, BERNARD HORWITZ and JOSEPH PETERS met.

g. In or about January 1976, the defendant RICHARD

G. WARME met with co-conspirator Angelo Oliveri in Irvington, New York, and gave him counterfeit Federal Reserve Notes.

k. On or about January 4, 1976, the defendant JAMES F. HEIMERLE met with the defendant RICHARD G. WARME in Dobbs Ferry, New York.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

In or about December, 1975, in the Southern District of New York, JAMES F. HEIMERLE and RICHARD G. WARME, a/k/a Richard Warner, the defendants, unlawfully, wilfully and knowingly did buy, sell, exchange, transfer, receive and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, counterfeited one hundred dollar Federal Reserve Notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2)

COUNT THREE

The Grand Jury further charges:

In or about January, 1976 in the Southern District of New York, JAMES F. HEIMERLE and RICHARD G. WARME, a/k/a Richard Warner, the defendants, unlawfully, wilfully and knowingly did buy, sell, exchange, transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of

the United States, to wit, counterfeited twenty and fifty dollar Federal Reserve Notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2)

COUNT FOUR

The Grand Jury further charges:

In or about December, 1975, in the Southern District of New York, and elsewhere, JAMES F. HEIMERLE and RICHARD G. WARME, a/k/a Richard Warner, the defendants, unlawfully, wilfully and knowingly did transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, counterfeited one hundred dollar Federal Reserve Notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2)

FOREMAN

ROBERT B. FISKE, Jr.
United States Attorney

NOTICE RE "DANGEROUS SPECIAL OFFENDER" (HEIMERLE)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-v- : 76 Cr. 442

JAMES F. HEIMERLE, :

Defendant. :

----------x

NOTICE TO THE COURT THAT THE ABOVE-NAMED DEFENDANT IS A DANGEROUS SPECIAL OFFENDER

Now comes the United States, by and through its attorney, Alan R. Naftalis, Special Attorney, United States Department of Justice, who is charged with the prosecution of the above-named defendant before the United States District Court for the Southern District of New York for alleged violations of Title 18, United States Code, Sections 371, 473, which are felonies committed when the defendant was over the age of 21 years, and hereby files this notice with the Court, in compliance with the provisions of Title 18, United States Code, Section 3575(a), stating that upon conviction to said felonies this defendant is subject to the imposition of sentence under Title 18, United States Code, Section 3575(b) as a dangerous special offender.

I do believe that said defendant is a dangerous

special offender for the reasons that this defendant has previously been convicted in the Courts of the United States and the State of New York for two or more offenses committed on occasions different from one another and from such felony and punishable in such Courts by imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the Commission of such felony, and less than five years have elapsed between the Commission of such felony and the defendant's release on parole or otherwise, from imprisonment for one such conviction and his Commission of the last such previous offense or another offense punishable by imprisonment in excess of one year under applicable laws of the United States and the State of New York, all within the meaning of Title 18, United States Code, Section 3575(e)(1). Furthermore, the felonies charged in the instant indictment constituted a part of a pattern of conduct which was criminal under applicable laws of this jurisdiction, which constituted a substantial part of the defendant's income, and in which the defendant has manifested special skill or expertise, all within the meaning of Section 3575(e)(2) of Title 18, United States Code.

The United States will offer evidence which will prove that:

The defendant JAMES HEIMERLE pled guilty to the crime of forgery in the Second Degree under New York State

Supreme Court Indictment No. 3694-72 and on November 21, 1972 he was sentenced to a maximum term of four years imprisonment.

The defendant JAMES HEIMERLE pled guilty to the crime of grand larceny in third degree in Supreme Court, Queens County New York, on November 28, 1972.

On June 18, 1973 the defendant was convicted by a jury sitting in the Southern District of New York for violation of Title 18, United States Code, Section 371 for conspiring with others to violate Title 18, United States Code, Sections 472 and 473; he was similarly convicted violating Title 18, United States Code, Section 472 for unlawfully, wilfully and knowingly and intent to defraud did pass, utter, publish and sell and attempt to pass, utter, publish and sell falsely made forged and counterfeited $50 and $100 Federal Reserve Notes. The maximum sentence of imprisonment under Title 18, United States Code, Section 371 for five years imprisonment and the maximum sentence under Title 18, United States Code, Section 472 for 15 years imprisonment. The defendant was sentenced to one year imprisonment under this indictment, indictment No. 72 Cr. 1330 (RLC).

On July 23, 1974 the defendant JAMES HEIMERLE pled guilty to violation under Title 18, United States Code, Section 1341, for using the mails in executing the scheme and artifice to defraud. Section 1331 of Title 18 bears a maximum period of imprisonment of five years. Judge Charles L. Brieant, Jr.

sentenced the defendant to four years of imprisonment Southern District of New York indictment number 72 Cr. 1331.

On May 5, 1976 the defendant JAMES HEIMERLE was convicted by a jury sitting in the Southern District of New York in a four count indictment charging him with violation of Title 18, United States Code, Section 371, for his participation in a conspiracy to sell counterfeit $100 Federal Reserve Notes; and three violations of Title 18, United States Code, Section 473 for his participation in three sales of counterfeit $100 Federal Reserve Notes. The sales referred to in this indictment took place in January and February of 1976. The defendant faced a maximum of five years imprisonment for his conviction of violating Section 371 and a maximum of 10 years imprisonment for each of his three convictions for violating Title 18, United States Code, Section 473. The Honorable Charles M. Metzner sentenced the defendant on June 15, 1976 to seven years imprisonment under this indictment, Southern District of New York indictment number 76 Cr. 143.

Furthermore, the United States will offer evidence to indicate that the present offense is part of a pattern of conduct which is criminal under the applicable laws of this jurisdiction, to wit the illegality of transferring, selling, exchanging and delivering counterfeit obligations of the United States, that the income derived therefrom constituted a substantial part of the defendant's income and that this defendant has manifested special skill or expertise in the distribution of counterfeit obligations of the United States. In the later regard, evidence will be offered to show the

defendant's knowledge of the location of an illicit printing plant for the production of counterfeit obligations.

Respectfully submitted,

ALAN R. NAFTALIS
Special Attorney
U.S. Department of Justice

Date

This notice having been filed with the Court prior to trial, the Clerk of the Court shall forthwith cause a copy of this notice to be delivered to the defendant named above and to thereafter place this notice under seal, not to be subject to subpoena or public inspection nor to be delivered to the presiding judge in this case, except upon further order of the Court, all as required by Section 3575(a) of Title 18, United States Code.

9-22-71
Date

/S/ E.L.P.
EDMUND L. PALMIERI
United States District Judge

TRANSCRIPT OF SUPPRESSION HEARING
(WARME)

(Pages A-14 to A-164 following)

[1]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 76 Cr. 442

JAMES F. HEIMERLE, et al., :

Defendants. :

----------x

BEFORE:

HON. MILTON POLLACK,

District Judge

New York, New York
September 17, 1976 - 10:15 a.m.

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.,
United States Attorney for the
Southern District of New York
BY: ALAN NAFTALIS, ESQ.,
Assistant U.S. Attorney

MICHAEL POLLACK, ESQ.,
Attorney for Defendant Heimerle
BY: ELLIOTT POLLACK, ESQ.,
Of Counsel.

JEFFREY WEINGARD, ESQ.,
Attorney for Defendant Warme

[2]

THE COURT: Are there any other applications?

MR. NAFTALIS: Your Honor, I believe Mr. Weingard is here on behalf of co-defendant Richard G. Warme in the same indictment, 76 Cr. 442 and wishes to move this Court to go forward with a suppression hearing in respect to a confession obtained from his client by agents of the Secret Service in respect to this pending prosecution.

THE COURT: Is that your client's desire?

MR. WEINGARD: Yes, sir, that is the desire.

THE COURT: You may proceed.

MR. WEINGARD: Thank you very much.

MR. NAFTALIS: Your Honor, the Government calls as the first witness John Vezeras.

J O H N V E Z E R I S, called as a witness by the Government, being first duly sworn, testified as follows:

THE CLERK: State your name, sir.

THE WITNESS: John Vezeris.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. NAFTALIS:

Q Mr. Vezeris, by whom are you employed?

A The United States Secret Service.

Q What is your official title?

A Special agent with the Secret Service.

Q Where are you assigned?

A New York field office, World Trade Center, New York.

Q Referring you to the 1st of March of this year. Was that your same assignment?

A Yes, sir, it was.

Q Did you report to work on March 1, 1976?

A Yes, sir, I did.

Q What, if any, orders were you given by your superior on March 1st?

A We were told to go to, I believe it was, the 9th Precinct in the Bronx.

MR. WEINGARD: I am sorry, I cannot hear the responses of the witness, your Honor.

A We were told to go to what I believe was the 9th Precinct, New York Police Department in the Bronx where we would interview a gentleman known to us as Richard Warme.

(Discussion off the record.)

Q Special Agent Vezeris, did you go to the police precinct as ordered?

A Yes, sir, I did.

Q Were you accompanied by anyone else when you went to that police station?

A Yes, sir, I was.

Q Would you please identify that other person?

A That was Special Agent George Hemmer of the New York office. Secret Service.

Q What squad were you assigned to on that date?

A Counterfeit Squad, Secret Service.

Q Did you know what squad Mr. Hemmer was assigned to?

A Same squad, Counterfeit Squad.

Q Counterfeit Squad.

Now, when you went to the Bronx, who did you go to see there?

A We met with Detective Koslowski and another detective the name of whom I cannot remember at this time.

MR. WEINBARD: Your Honor, I just turned around and I see there are other witnesses in the courtroom. I assume perhaps some of those will testify. I ask that all other witnesses be excluded at this time, sir.

THE COURT: All right.

If you come forward here, we have a witness room where you can stay.

Go ahead.

Q Did there come a time when you saw Detective Koslowski?

A Yes, sir, there did.

Q Who did you go to see, or what did you go to see Detective Koslowski about?

A He had called our office that same morning and he had spoken to my supervisor Mr. James Heavey. At that time he advised Mr. Heavey that they had in their custody a gentleman by the name of Richard Warme and that Mr. Warme had been the subject of an investigation regarding a homicide involving another individual named Angelo Oliveri.

MR. WEINGARD: I am going to move to strike.

THE COURT: You had a conversation with this other gentleman who identified Mr. Warme?

THE WITNESS: Yes, sir.

THE COURT: This was a means of identification, is that right?

THE WITNESS: I had already known who Mr. Warme was.

THE COURT: Then this gentleman gave you some background information?

THE WITNESS: As to the investigations.

THE COURT: All right, go on from there without the detail of the background information.

A After we had discussed this background

information with the detectives of that precinct, myself and Mr. Hemmer then went and saw Mr. Warme.

Q What, if anything, did you say to Mr. Warme when you first saw him?

A After identifying ourselves as special agents of the Secret Service, we advised Mr. Warme that we wanted to question him about a counterfeit operation that had taken place and that we were investigating and we advised him that he was under arrest as a party in that investigation.

At that time he was told that he didn't have to say anything at that time and he was advised of his constitutional rights orally.

After that myself --

MR. WEINGARD: I am going to move to strike the last portion of the answer as conclusory on the part of the witness, sir.

THE COURT: Motion denied.

Q Continue, Special Agent Vezeris.

A At that time the special agent and myself accompanied Mr. Warme down to the New York field office.

Q How did you accompany him?

A In a Government vehicle.

Q What, if anything, transpired in the automobile?

A Well, in the Government automobile, we then advised Mr. Warme that he was under investigation regarding a counterfeit case and we also secondly advised him once more that he had the right to remain silent and we advised him of his constitutional rights.

MR. WEINGARD: I am going to move to strike that portion which relates to constitutional rights, sir. I think if the witness is required to testify along those lines, he ought to say what he said.

THE COURT: Motion is denied.

MR. WEINGARD: Exception, sir.

THE COURT: You have privileges of cross examination and this is not yet the time to exercise them.

Go ahead.

MR. NAFTALIS: Thank you, your Honor.

Q What, if anything, did Mr. Warme say to you when you were riding in the automobile?

A It was just conversation. He didn't say anything specific. He said as to these rights that we advised him of, he said he understood the rights that we had advised him of, however there was no more dialogue except general conversation.

Q There was no examination of him --

THE COURT: What specifically did you tell him about his rights?

THE WITNESS: He was advised that he had the right to remain silent, that anything he said could be and would be used against him in a court of law, he was advised that he had the right to have an attorney present prior to and during the questioning, he was told that if he decided to answer questions now without an attorney present he could stop answering these questions at any time, he was advised that if he could not afford a lawyer, an attorney, that one would be provided for him by the federal court.

He was further advised that if he decided to start answering questions at that time he could stop answering the questioning at any time during the interview.

MR. NAFTALIS: Excuse me, your Honor, he is gone.

A He was then asked if he understood these rights and he stated that he did. That was it.

Q Then I take it that you eventually arrived at the offices of the Secret Service of New York City?

A Yes, we did.

Q Where are those offices located?

A Suite No. 623, 6 World Trade Center.

Q Was Mr. Warme brought to those rooms?

A Yes, sir, he was.

Q Once he arrived in those rooms what, if anything, did you do concerning Mr. Warme?

A After he was processed, photographed and fingerprinted, he was advised once more of his constitutional rights. He was then shown a copy of these constitutional rights and a waiver form of these rights.

Q Special Agent Vezeris, I am going to show you Government's Exhibit No. 1 marked for identification. I am going to ask you if you can identify this document.

A Yes, sir, this is the warning and consent to speak, of his rights and waiver form that the Secret Service uses when advising any party involved in any investigation of their constitutional rights.

Q Is this the form that you just referred to?

A Yes, sir, it is.

Q Was this form executed in your presence by Mr. Warme?

A Yes, it was.

Q Does this represent an additional recitation of his rights?

A Yes, sir, it does.

Q The constitutional rights that you referred to earlier?

A Yes, sir, it does.

Q The same constitutional rights that you have thus far testified that three times prior you have orally advised him of?

MR. WEINGARD: Move to strike.

THE COURT: Well, there is nothing to strike, it is just a summary.

MR. WEINGARD: That is true, Judge.

MR. NAFTALIS: Your Honor, before I go any further there is another gentleman in the back of the courtroom.

THE COURT: Are you a spectator or a witness?

A VOICE: Spectator, your Honor.

MR. NAFTALIS: Thank you, your Honor.

Q Mr. Vezeris, what was said to Mr. Warme when this document was given to him? What did you say to him?

A We told him that he did not have to sign the form, we told him that the reason he was signing the form is that we were asking him to answer questions regarding a counterfeit investigation that we were conducting and that it was his option to either sign the form or not to sign the form.

MR. NAFTALIS: Your Honor, I am going to

move that Government's Exhibit No. 1 marked for identification be accepted into evidence for this proceeding.

MR. WEINGARD: Rather than conduct a voir dire at this point, Judge, I will reserve for cross examination.

THE COURT: Exhibit 1 is received without objection.

(Government's Exhibit No. 1 was received in evidence.)

Q Special Agent Vezeris, was anyone else present when you gave this form to Mr. Warme?

A Yes, sir, there was.

Q Would you please identify who that other person was?

A Special Agent George Hemmer.

Q Did both of you sign as witnesses, or by way of certification, this document?

A Yes, sir, we did.

THE COURT: Let's move along quickly. That document recorded the questions that you asked him and the answers that he gave after Exhibit 1 was signed.

THE WITNESS: No, sir, it does not. It is just a waiver.

MR. NAFTALIS: We have a second document, your

Honor.

Q Special Agent Vezeris, after this document was executed, did you and Special Agent Hemmer proceed to examine Mr. Warme?

A Yes, sir, we questioned him and interviewed him regarding the counterfeit case we were investigating.

MR. WEINGARD: I'm sorry, Judge, I could not hear the last answer, may I have it reread, please?

(Record read.)

Q Did Mr. Warme agree to answer questions concerning that investigation?

A Yes, sir, he did.

Q Did he proceed to tell you and Special Agent Hemmer the details concerning his involvement in that counterfeiting investigation you were conducting?

A Yes, sir, he did.

Q Did there come a time, Special Agent Vezeris, that you brought a stenotypist into the room where you were examining Mr. Warme?

A Yes, sir, that is correct.

Q Did there come a time that with Mr. Warme the two of you dictated to the stenotypist a statement for Mr. Warme?

A We did not dictate a statement for him, in conversation and in going over the facts that we presented

to Mr. Warme at that time, we both concurred with what Mr. Warme wanted put into the statement.

Q You and Mr. Warme both concurred?

A Yes, sir.

Q As to what your recollection was as to what he said and his agreement as to the accuracy of your recollection?

A Yes, sir.

Q That was done in the presence of the stenotypist who then took it down in shorthand, correct?

A Yes, sir.

Q She was to transcribe that into typed form, was she not?

A Yes, sir, she was.

Q Did Mr. Warme at any time ask to call an attorney?

A Yes, sir, he did.

Q Was he given the option and opportunity to use the telephone?

A Yes, sir, he was.

Q Did he make calls?

A Yes, sir, he did.

Q Did he engage in conversations that were unmonitored?

A Yes, he did.

Q And unmonitored to the best of your knowledge by

any agent of the Secret Service?

A Yes, sir, that is correct.

Q Who dialed the numbers for Mr. Warme?

A I am not sure if it was myself, I believe he was given a telephone and I believe he dialed the numbers himself, but I am not positive.

Q He was given complete access to the telephone?

A Yes, sir.

Q He was told at any time he wished to make a telephone call?

A He was told that if he wanted to make a phone call he was allowed to make a phone call.

Q And he exercised that right?

A Yes, sir, he did.

Q I am going to show you Government's Exhibit No. 2 marked for identification and ask you if you can identify this document.

A This is an affidavit that was completed by Mr. Warme which sets forth once more the constitutional rights that he has a right to know about.

MR. WEINGARD: Excuse me, Judge, I must object to the characterization of the piece of paper as an affidavit. There is no signature ascribed to anyone.

MR. NAFTALIS: Your Honor, it is entitled

an "Affidavit."

THE COURT: Excuse me, will you stop this cross colloquy? It is not the proper way to make an objection and it doesn't call for a response. This is not a game of shuttlecock.

You may proceed.

A It sets forth the constitutional rights that were once more advised Mr. Warme. It sets forth the questions, context of the interview that took place between myself and Mr. Warme and Agent Hemmer.

Q This was the statement as taken down and transcribed by the stenotypist?

A Yes, sir, that is correct.

Q Do you recall the name of that stenotypist?

A It was Miss Pat Rogers.

Q She is an employee of the Secret Service?

A Yes, sir, she is.

Q Special Agent Vezeris, after this statement was typed by Miss Rogers, did she return it to you?

A Yes, sir, she did.

Q Did you bring it to Mr. Warme and ask him to read it and sign it?

A Yes, sir, I did.

Q Did he agree to sign it at that time?

A No, sir, he did not.

Q Did he indicate his reasons as to why he did not wish to sign it?

MR. WEINGARD: Objection, leading.

THE COURT: Overruled.

A He was told that --

THE COURT: Did he indicate the reasons why?

THE WITNESS: Yes, sir, he did.

Q What reasons did he state?

A That he was advised by his attorney not to do so.

Q Did Mr. Warme make any further statement to you?

A No, sir, other than he had spoken to his attorney and his wife.

MR. NAFTALIS: Your Honor, I am going to move the admission of Government's Exhibit No. 2 marked for identification into evidence for these proceedings.

THE COURT: What you mean is you offer it in evidence They move things in England but over here we offer it into evidence.

Any objection?

MR. WEINGARD: Yes, indeed, Judge, I don't believe an adequate foundation has been laid.

THE COURT: I don't accept that objection, but we will deem it marked for identification at this time

and you may renew your offer later.

MR. NAFTALIS: Your Honor, I have no further questions of this witness.

THE COURT: All right.

MR. WEINGARD: May I proceed, sir?

THE COURT: Yes.

MR. WEINGARD: Thank you.

CROSS EXAMINATION

BY MR. WEINGARD:

Q Am I pronouncing your name correctly, Mr. Vezeris?

A That is correct.

Q Special Agent Vezeris, perhaps we might be able to find out some of the time sequences involved here. I think you indicated that the very first time you were aware of my client's presence in a precinct stationhouse was when you received a call from a detective, is that correct?

A When our office received a call from a detective, yes, sir.

Q Can you tell me approximately what time of day that was?

A It was mid-morning, I would say approximately 9:15 or 9:30 when we first received a call,. but I can't be sure.

Q Could it have been later than 9:30?

A It could have been, yes, sir.

Q Could it have been as late as about 11:00?

A No, sir, I don't believe so.

Q So it would place it somewhere between 9:30 and 11:00 that you first received a call, is that correct?

A Somewhere between 9:15 and after -- prior to 11:00, I would say, yes, sir.

Q I think you were informed, or at least your supervisor was informed something about my client's presence at a particular stationhouse, correct?

A He was told he was at that location, yes, sir.

Q What location is that?

A The 9th Precinct, I believe, in the Bronx.

Q The 9th Precinct?

A I am not sure if it is the 9th Precinct. Homicide Squad which is at this precinct off the Grand Concourse in the Bronx. I am not sure of the exact designation.

Q Incidentally, did you make any notations or memoranda concerning the events of this day?

A No, sir, I did not.

Q You have no notations whatsoever?

A No, sir.

Q You have no notations concerning your initial interview of my client?

A No, sir.

Q Prior to the time the stenographer walked in?

A No, sir.

Q Did you make any reports relating to my client's arrest?

A I don't believe I made reports, sir, there was a report made but I don't believe --

Q Was that made by a member of your team who conducted the interrogation of my client with you?

A Yes, sir.

Q You were in charge of conducting that interrogation, is that correct?

A No, sir, that is not correct.

Q You were one of the individuals in charge of it?

A I was one of the individuals that took part in the interview. I was not in any way in a supervisory capacity.

MR. WEINGARD: I would ask for production at this time, Judge, for purposes of cross examination, of any reports prepared by the team of which this special agent was a member for the purpose of interrogating him relating to the events of the day in question.

MR. NAFTALIS: Your Honor, we have no such reports and I think this witness has indicated he

has prepared none.

THE COURT: What was that?

MR. NAFTALIS: Your Honor, I am indicating for the record that this witness indicated he prepared none and the Government is in possession of no reports.

THE COURT: All right.

Q All right. When you went to the precinct at the Grand Concourse in the Bronx, do you recall what time you arrived?

A It was approximately 10:00 a.m., I believe, sir.

Q There was a period of time, was there not, while you waited in that precinct prior to the time you first met with and saw the defendant, is that correct?

A Yes, sir, that is correct.

Q And that period of time was approximately how long, if you recall?

A I would say approximately 20 minutes or a half hour, sir, I couldn't be sure.

Q You were not permitted to see him at that time, or you did not choose to see him at that time?

A We did not choose to see him at that time, yes, sir.

Q You knew at that time that he was being interrogated by members of the New York City Police Department, is that correct?

A Yes, sir, that is correct.

Q Including Detective Koslowski? Is that the pronunciation?

A Detective Koslowski.

Q And there were otner detectives interroqating my client as well during the period of time, isn't that so?

A I did not see the interroqation of your client, I was meeting with the detectives in a separate room. There were other detectives present, however I never saw or heard interroqation of your client.

Q But he was beinq interroqated according to what you told us concerning a related matter, is that correct?

A Yes, sir.

Q At least you viewed it to be a related matter?

A Yes, sir.

Q All right. There came a point, did there not, when my client was released by the New York City detectives into your custody, is that true?

A Yes, sir, that is correct.

Q Can you tell us what time that occurred?

A It was approximately again 10:20 or 10:30. It was very shortly after we had first met with your client in the room where he was seated and after he was advised of his rights and told that he was under arrest and told

of the purpose of our being there.

Q So that we get the incidents or events correct, I think you told us that you arrived there sometime around 10:30, it might have been later, it might have been earlier, is that correct?

MR. NAFTALIS: Your Honor, I object. He is characterizing the testimony, and that is not what the testimony was.

THE COURT: What is your legal objection?

MR. NAFTALIS: Your Honor, Mr. Warme is now testifying.

THE COURT: What is your legal objection?

MR. NAFTALIS: It is an improper question, improper form of question.

THE COURT: There is nothing improper in the form. It may be repetitious as a summation.

MR. WEINGARD: May I proceed?

THE COURT: Read the question to the witness.

(Question read.)

A No, sir, it is not correct. I said we arrived there at approximately 10:00 a.m. or so. I said we first met your client at approximately 10:20 or 10:30.

Q Didn't you testify that the first time you received --

THE COURT: Please don't argue with the witness.

MR. WEINGARD: All right, sir.

Q When you first met my client at the time you have indicated, what was his physical appearance, do you recall?

A I don't understand, in what respects, sir?

Q Had you been informed how long he had been at that precinct at the time you first met him by various other New York City detectives?

A That he had been there that morning, sir. I don't recall being informed exactly what time he had gotten there.

Q Were you informed that he was arrested at his home sometime around 2:00 or 3:00 o'clock in the morning of the prior day?

A I was advised that he was arrested at his home. I don't recall what time I was told he was arrested.

Q So it is your testimony that you don't remember the time they indicated to you?

A Yes, sir, that is correct.

Q When you first met with Mr. Warme, what exactly did you say to him and what, if anything, did he say to you?

A We advised him that we were special agents of the Secret Service and we showed him our commission books and

credentials. Then advised Mr. Warme that he was under arrest, advised of his constitutional rights.

Q When you say you advised him of his constitutional rights, what exactly did you say to him?

A He was first advised that we were investigating a counterfeit investigation through our office. He was then told that he had the right to remain silent, anything he said could be and would be used against him in a court of law, that he had the right to an attorney to be present during any questioning or interview that we conducted with him. That if he could not provide an attorney or could not afford an attorney one would be provided for him by the Court, he was told that if he decided to answer questions without an attorney being present he could stop answering questions at any time during the interview.

He was also advised that he could stop answering questions at any time during any interview we conducted whether his attorney was there or not.

Q Did you advise him that he was under arrest at that time?

A Yes, sir, we did.

Q Did you have a warrant for his arrest at that time?

A In my possession, sir.

Q Did you have a warrant?

A There was a warrant.

Q For his arrest at that time?

A There was a warrant. I am not sure if there was a warrant issued or not. We did not have a warrant physically in our custody.

Q You didn't have a warrant with you?

A Physically in my custody? I don't recall, sir, I don't believe so.

Q You didn't hand him a warrant, did you?

A I don't recall, sir.

Q Is it that you don't recall or that you don't recall having handed him a warrant?

A I don't recall if I had a warrant to hand him.

Q Did you testify a moment ago that it was your belief that a warrant may not have been issued at that time?

A No, may have been issued.

Q Do you know as a fact whether a warrant had or had not been issued at that time?

A I can't recall exactly if it had been issued.

Q Do you know from your own knowledge whether or not a complaint had been presented to a Magistrate at that time?

A I don't recall, sir.

Q Do you know of your own knowledge whether or not

an indictment had been voted at that time against my client?

A I don't recall, sir.

MR. WEINGARD: Your Honor, I would invite a stipulation at this point from counsel if I may.

THE COURT: If you wish to talk to counsel, you do that. But you don't do it on the record or through me.

MR. WEINGARD: I understand, Judge.

May I have a moment to talk to counsel at this point, I think it might simplify things.

(Pause.)

MR. WEINGARD: Your Honor, at this point we have a stipulation. The stipulation is that there was not then and has never been an arrest warrant issued in connection with this case relating to my client Richard Warme.

THE COURT: What is the legal significance of that?

MR. WEINGARD: Well, if you wish argument at this point I will be pleased.

THE COURT: I don't want any argument. Is there any legal significance to that?

MR. WEINGARD: I believe that there is significance to it, sir.

THE COURT: All right. I don't see what it has got to do with the suppression hearing but you go ahead.

MR. WEINGARD: Thank you, Judge.

Q After you advised my client of his rights, did you tell him he was under arrest?

A What time are you talking about?

Q Right at the beginning, the very first time you saw him.

A He was first told that he was under arrest.

Q Did you place handcuffs on him at that time?

A After he was advised of his rights, after he was told he was under arrest just prior to our leaving the precinct he was placed in handcuffs, is that correct?

Q When you first saw him was he handcuffed at that time?

A No, sir, I don't believe he was.

Q But he was in the custody of various policemen, New York City policemen at that time?

A He was at the precinct. Whether he was being held in custody or whether he was there voluntarily, I don't know. I know he had been questioned by the Department and I know he was at the precinct.

Q And you also know that he had been arrested by the police earlier that day, at sometime, is that correct?

A I don't know if he had been arrested, sir, I know he had been taken into custody or had come down to the

precinct whether it was voluntary or not whether he was under arrest by the local police or not, I don't know.

Q You have no direct knowledge?

A No, sir.

Q When you brought him down to the automobile, had you engaged in any conversation prior to that time with my client other than the conversation you related to us?

A It would have been general conversation, sir. I don't recall if I had said anything else to him. He was advised of his rights.

Q I understand that.

A He was not questioned specifically about the investigation. I don't believe he was questioned at all about anything relating to the counterfeit.

Q Did he indicate to you that he wanted to call a lawyer at that time?

A No, sir, he did not.

Q When you got down into the automobile I think you told us that you advised him of his rights again.

A He was advised once more while we were enroute to the New York office. It was not immediately when we got down to the automobile.

Q Did you have any other type of conversation with him other than telling him what his rights were again?

A Other than general conversation, sir.

Q What kind of general conversation did you have, if you recall?

A He was trying to explain that he had nothing to do with this, I believe, and that -- why am I here, this and that,and we told him that we weren't going to interview him specifically about this investigation until we got to the New York office.

Q But you advised him of his rights again, is that correct?

A Yes, sir, we did. We wanted to make sure he was aware of his rights and we didn't have a waiver form for the rights in the vehicle and I don't have enough information at that time to thoroughly interview him about the case.

Q When you got down to the office, that is in the World Trade Center, is that correct?

A Yes, sir, that is correct.

Q When you got down to your office, did there come a point when you relieved my client of various items of property which he had in his possession?

A I don't recall if I did that, sir, or if somebody else did, but I don't recall.

Q But it was done by somebody at the office, is that correct?

A I don't know that for sure.

Q Isn't it part of your standard procedure?

MR. NAFTALIS: Your Honor, I don't believe the witness finished his answer.

THE COURT: Let him finish his answers before you start your next question.

A I don't recall. The property could have been still maintained by the New York Police Department if they had any property. I really don't recall, sir.

Q Isn't it part of your standard procedure to search somebody who is under arrest at your office?

A That is correct.

Q Isn't it part of your standard procedure to examine the contents of his pockets when you bring someone to the office for purposes of arrest?

A Standard procedure, no, sir, he was searched for weapons and contraband.

Q What about pedigree information, a wallet?

A Pedigree --

Q Papers.

A Pedigree information was obtained by the interview with the client.

Q Did you conduct the search of his wallet?

A Not that I recall, sir. I don't recall.

Q Did anybody conduct a search of his wallet?

A I do not recall, sir.

Q Did anyone conduct a search of his person?

MR. NAFTALIS: Objection, this is cumulative. We have already gone through this.

Q Did anyone conduct a search of his personal papers and effects?

A Not that I recall, sir.

Q Did you do it?

A I don't recall if I did or not, sir.

Q What did you do when you first got to the office?

A He was placed in the interview room, at that time I went to my desk and I obtained an advice of rights form, a waiver form, it was then brought to your client in the interview room and at that point is when he was advised once more of his constitutional rights. He was shown the waiver form, it was read to him verbatim off the waiver form, read the waiver form, signed the waiver of his rights acknowledgment and we began the interview.

Q Prior to doing that, did you search my client at all?

A Sir, I do not recall.

Q But it is part of your regular procedures under those circumstances --

MR. NAFTALIS: Your Honor, he cut him off again.

THE COURT: I don't recall.

Q -- to conduct such a search?

A I don't recall whether I searched him or another agent searched him. You are asking me if I searched him and I say I don't recall.

Q Do you have any recollection at any time during the course of that day of handing my client's wallet back to him and personal effects back to him?

A I don't recall, sir.

Q Do you have any recollection of seeing any of your brother agents hand my client's wallet and personal effects back to him?

A Not to my recollection, sir.

Q Is it standard procedure at your office when you return items of property from an individual, taken from an individual, to ask him to sign a receipt or an acknowledgment that those items of property are returned in the same form as they were when they were taken from him?

A Standard procedure, sir?

Q Yes.

A No, sir, I don't believe it is standard procedure.

Q But it is a procedure utilized frequently, is it

not?

A It is a procedure that can be utilized the frequency of which I don't know.

Q Do you have any idea whether that procedure was used in this particular case?

A Sir, I told you, I don't recall anything about taking property from your client or any other agent taking property from your client, therefore I do not have any knowledge of whether or not it was given back to him. I have no knowledge right now as per my recollection at this time whether or not I searched your client, whether or not the property was there, whether or not another agent searched him or what. He was searched. By whom I cannot tell you.

Q You said, I think, that you presented this waiver of rights form to my client and you read it to him, is that not so?

A That is correct, sir.

Q Were you the one who read it or was your co-agent the one who read it?

A I read it. I showed him the form, I read it verbatim off the top and he was then shown the form.

Q You are positive of that?

A Yes, sir, I believe I signed -- there was a

witness, I believe George Hemmer witnesses the waiver, if I remember correctly. I signed the acknowledgment myself, the affidavit at the bottom.

Q At any event, what did he say to you as you were reading that particular waiver of rights form?

A He asked me if he had it, if it was necessary for him to sign it, I said no, it is not. I said it was up to him.

Q What did he say at that time?

A He didn't say anything, he signed it.

Q Did he read it before he signed it?

A Yes, he did read it.

Q You are positive?

A Yes, sir, because after he read it, he asked me, is it necessary for me to sign it.

Q Was there any conversation concerning the fact that my client was under investigation in connection with a homicide?

A No, sir.

Q Did you make any reference to the fact that he was facing 20 to 25 years in connection with the state proceedings?

A No, sir, because I wouldn't have any idea what the state proceedings exactly were about as far as

sentence limitations, et cetera. I didn't question him about that.

Q You knew he was being investigated in connection with a homicide?

A Yes, sir.

Q You knew that the homicide was alleged to have been related to your investigation?

A Yes, sir, I did know that.

Q And you knew that the police told you that they were interested in putting him in jail for homicide?

A They told me that they were investigating him regarding a homicide.

Q You knew that in state court there are penalties for homicide, obviously?

A Yes, sir.

Q You know that those are severe penalties, don't you?

A Yes, sir.

Q Are you telling us that you have no idea that a person can go to jail for up to 20 or 25 years in connection with a homicide case in state court?

A I am telling you I don't know exactly what the sentences are that are imposed in homicide defendants.

Q That is not my question, my question is, do you recall making reference to the fact that he was facing 20

or 25 years in connection with a homicide case in state court?

A No, sir, I do not.

Q Did you ask my client for his cooperation in connection with your investigation?

A I asked him if he wanted to answer questions regarding this.

Q I am not asking that. I am asking did you ask my client for his cooperation for assistance in connection with your investigation.

A Directly in those words?

Q Any words.

A Sir, the very fact that we were interviewing him regarding an investigation implies that we are asking for cooperation in the investigation.

Q Agent, did you ask my client for cooperation in connection with your investigation?

A In those words, sir?

Q In any words.

A I can't answer that yes or no, sir.

Q Did you say to him that if he cooperated with your investigation and told you all about the incident that you would assist him in obtaining low bail or no bail at all?

A No, sir, I did not.

Q Did you make any reference to the fact that if he cooperated the bail conditions would be more lenient than if he did not cooperate?

A No, sir, I did not.

Q Did you make any reference to the fact that he was facing 20 or 25 years but if he cooperated you could help him and assist him in connection with his state case?

A No, sir, I did not.

Q You made no references at all to the effect that you were interested in his cooperation in connection with your investigation?

A Sir, we made -- we told him that we were interested in getting the facts set forth as he could tell us in this case. He was not promised anything, he was not told that any bail reduction could be obtained. He was just asked to answer questions relative to the case.

Q Did you ask him directly or indirectly for his cooperation in connection with this case?

THE COURT: I think we have had enough of this.

MR. WEINGARD: I am sorry, sir.

THE COURT: I say we have had enough of that.

MR. WEINGARD: All right, sir.

Q Approximately how long did my client remain

at your office at the World Trade Center, if you know?

A Approximately an hour and a half, two hours, I can't be sure, sir.

Q Might it have been longer than two hours?

A It is possible, yes, sir.

Q Could it have been as long as four hours?

A I cannot recollect. It is possible, yes, sir.

Q There came a point, did there not, when in addition to being at your office he was taken to a special attorney's office with the Strike Force, is that correct?

A Yes, sir, that is correct.

Q Do you know how long he remained there?

A No, sir, I do not.

Q Were you present at that time?

A I believe I was, yes, sir.

Q Do you have any recollection of whether or not my client was arraigned later that afternoon or the next day by a Magistrate?

A I don't recall, sir.

Q No recollection as to that?

A He was arraigned either that day or the next day, but I don't recall when he was arraigned.

Q With respect to the interrogation in your office, were you the only officer conducting that interrogation,

the only special agent?

A No, sir, I was not.

Q Was there another special agent as well?

A George Hemmer.

Q Any others beside yourself and your partner?

A At times our supervisor Mr. Heavey, Special Agent Heavy came into the interview room, he was not present during the entire interview.

Q By the way, you carry a gun, do you not?

A Yes, sir, I do.

Q Your partner carries a gun?

A Yes, sir.

Q Various other special agents who may have participated in this interrogation carry guns?

A Yes, sir.

Q When you got down to the New York City Police Department and first met with Mr. Warme, my client, you noticed, did you not, that the other detectives in the squad room were all armed?

A I can't recall if I noticed that or not, sir.

Q All right. Approximately how long did you interrogate my client while at your office?

A Myself personally, sir?

Q Yes.

A I would say approximately an hour.

Q What about your brother agents, approximately how long did they interrogate my client while he was at your office?

A As I explained before, Special Agent Heavey was in and out and I was not there. They might have interviewed him at times when I walked out. It would be approximately the same amount of time, I believe.

Q And after he signed this waiver of rights form, you say you had some conversation concerning the facts of your investigation, is that correct?

A Yes, sir.

Q Did there come a point when you asked my client for various types of plates in connection with counterfeiting?

A Counterfeiting plates, sir?

Q Yes.

A I don't recall, sir. Most of the investigation, most of the facts in this case up to that point were set forth by Special Agent Hemmer. He had the most knowledge of how your client and other suspects at that time were involved in this case.

Q You are talking about your superior, is that correct?

A No, sir, I am not, I am talking about

Special Agent Hemmer.

Q Your partner?

A Another agent in the office, yes, sir.

Q I understand. He was the one who was reading certain things to my client during the course of this interrogation?

A He was the one that was abreast of the facts in this investigation more so. As far as reading him certain things, I don't recall that.

Q Did there at any time come a point when you and your fellow special agent made any reference to the fact that various other individuals were either under arrest, about to be arrested or were cooperating with your investigation?

A I can't recall specifically, sir. It is possible.

Q Perhaps I can refresh your recollection. Was there a point at which you made reference to the fact that a Bernard Horwitz was cooperating with your investigation and had given a full statement to you?

A I don't believe I said that, sir. I don't believe I brought that up.

Q What about your fellow special agent, do you recall whether he said that?

A That name was brought up I believe it was by Agent Hemmer.

Q This other special agent read from a document indicating that he had some sort of statement from Mr. Horwitz, is that correct?

A I don't recall that, sir. I know he had notes regarding the case, reports regarding the case. I don't know if he read statements. To my recollection I cannot recall if he read statements.

Q Do you know whether or not there was such a statement from Mr. Horwitz in the possession of any of the agents at that time?

A I cannot recall.

Q What about Mr. Peters, was there a reference made to Mr. Peters during the course of the interrogation?

A There certainly was.

Q Was my client informed that Mr. Peters had cooperated fully with the investigation and that if he didn't cooperate Mr. Peters could be testifying against him in a court of law?

A To my recollection, no, sir. I don't recall the specifics. The name I remember, as I said before, the specifics regarding the investigation were set forth by Agent Hemmer. He was most familiar at that time with the investigation regarding your client and the names of Mr. Peters and Mr. Horwitz you just brought up.

Q When you first asked my client what occurred,

did he immediately tell you exactly what happened without any hesitation?

A In a narrative? He immediately started answering questions. Now whether it was in a narrative form at first or whether or not it was a question and answer session, I don't know specifically. I believe we asked him questions.

Q Please continue, I'm sorry, go ahead.

A He was asked questions and he provided answers to these questions.

Q Did you have a stenographer present or a tape going at the time you first conducted that interview?

A No, sir, we did not.

Q No tape at all?

A No, sir.

Q But there came a point,you say, when you invited the stenographer into the room, is that correct?

A Yes, sir, there was.

Q Did my client directly dictate to that stenographer himself or did you dictate to the stenographer based on your understanding of what my client had said to you?

A He was told to tell the stenographer in his words what we had just discussed and what his answers were to the various questions and to set forth in a chronological

order what we had discussed.

Q Were there notes that he was working from?

A No, sir.

He did not write any notes down.

Q Did you supply him with any notations at that point?

A No, sir, we did not.

Q Did there come a point when my client indicated to you that he would not answer any further questions?

A After he had said that he had spoken to his wife and his attorney, yes, sir.

Q I think you indicated that there came a point when he asked for his lawyer, is that so?

A Yes, sir.

Q When was that?

A That was toward the end of our interview.

Q Prior to that, when he first got to the office, did he at any time ask you for the right to make a telephone call to his attorney?

A No, sir, he did not.

Q Did there come a point when he asked you to call his wife?

A Yes, sir, later on in the interview he did.

Q You mean after he finished making statements to you?

A That is correct, sir.

Q He wanted to talk to his lawyer after he concluded making statements?

A That is correct.

Q But he made no request to speak to his lawyer prior to the time he spoke to you?

A That is correct, sir.

Q And he made no such request after you read the waiver of rights form to him?

A That is correct.

Q You say that you allowed him to make a telephone call?

A He was allowed to make a telephone call when he requested it. He said he was concerned about his wife in some sort of way and he wanted to call his wife. The specifics of that I don't recall.

Q Did there come a point when my client asked you for food during the course of that interrogation?

A No, sir, not that I recall.

Q And you supplied him with none, I take it?

A I believe he was supplied with coffee. I am not sure.

Q You are not sure?

A I am not sure.

Q Do you remember whether or not he was given anything to drink, any water or anything like that?

A I just said he was provided with coffee to the best of my recollection. He was provided with something to drink.

Q You are not sure?

A I am not positive, no, sir.

Q Do you recall whether he was allowed to smoke during the course of that interrogation?

A I don't recall specifically. He would have been allowed to smoke in my idea, yes, sir.

Q During the course of the interrogation, prior to the stenographer coming into the room, tell us exactly to the best of your recollection what my client said to you and what you said to him concerning the events that you were interested in investigating.

A Whatever I would have questioned him about regarding this case, would have been built upon the facts that were set forth by Agent Hemmer. In other words, Agent Hemmer would bring up an idea involved in this case or a point of fact that he had discovered in his investigation of this case and I would supplement that fact with my questions in order to clarify certain points or whatever. As far as bringing up specific points

about the case, regarding the gentleman's name and other points in this case, I did not bring up these facts.

Q Did Agent Hemmer or yourself say at any point to my client that you had enough evidence and the case was virtually made against him based on the statements of other individuals?

A No, sir.

Q Did you make reference to Jimmy Heimerle, a co-defendant, in connection with the investigation?

A Reference was made in the latter part of the investigation to Mr. Heimerle, that is correct.

Q I assume you told my client that Heimerle was in jail and that he was facing severe time, is that correct?

A No, sir.

Q Did you make reference to the fact that Heimerle had given you a statement against my client?

A No, sir, he did not.

Q Did you make any reference to Angelo Oliveri?

A The name was brought up, sir, now who brought the name up, I don't know if it was Agent Hemmer or myself. The name was brought up and discussed.

Q At any time during the course of the initial phases of your investigation at your office did my client

indicate that he didn't want to talk about this investigation any further?

A Say that again, sir, repeat the question, please?

Q Did my client indicate that he did not wish to talk about the investigation, talk about your investigation any further?

A Yes, sir, after he had told us that he would not sign a statement and he had been advised by his attorney not to do so.

Q Before that?

A No, sir.

Q Did there come a point when he told you to lock him up, put him in jail and leave him alone, anything like that?

A No, sir.

Q Nothing at all?

A No, sir.

Q Did he make reference to the fact that he hadn't slept since 3:00 o'clock in the morning, preceding morning?

A I don't remember the time, sir, he said he had been tired but I don't recall.

Q When did he say he had been tired?

A Toward the end when he wanted to contact his wife, toward that time.

Q Did he indicate he was tired prior to that to you?

A No, sir, he did not.

Q Did he appear to be tired prior to that, too?

A I can't answer that, sir. I don't know what your client looks like tired or not tired.

Q So you formed no opinion as to that?

A I couldn't tell you whether he was tired or not.

MR. WEINGARD: Could I have a moment, Judge?

(Pause.)

Q During the course of this interrogation, you were in a specific room, were you not?

A Yes, sir, we were.

Q Can you describe the dimensions of that room for the Court?

A It would be approximately from the jurors' box to my position square.

Q May we agree that that is approximately 12 feet by 12 feet, roughly?

MR. NAFTALIS: I think it is a wee bit longer than that. I would say more about 15 by 15.

Q Approximately how many individuals were in that room at any given time, the number of people in that room during the course of the examination of my client?

A Four.

Q Including my client?

A Yes, sir.

Q So that could be three agents and my client at one time, is that so?

A At times. At other times two agents, a stenographer and your client at other times, most times your client and two agents.

Q This particular room has a two-way mirror, I take it?

A Yes, it does.

Q Various individuals were observing my client through that two-way mirror during the course of that investigation, is that so?

A I have no knowledge of that, sir.

MR. WEINGARD: Thank you, no further questions.

THE COURT: What was that exhibit number that you wanted?

MR. NAFTALIS: I'm sorry, your Honor.

THE COURT: What was the exhibit number that you offered?

MR. NAFTALIS: I offered Exhibit No. 2, your Honor.

THE COURT: That may be now received.

MR. WEINGARD: That is over objection, sir.

(Government's Exhibit 2 received in evidence.)

xx

MR. NAFTALIS: I have two short questions for redirect, your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. NAFTALIS:

Q Special Agent Vezeris, when you went up to the Bronx to the police station there, were you informed by your superior that there had been an authorization by the Department of Justice to arrest Mr. Warme?

A Yes, sir.

MR. WEINGARD: Objection. Move to strike the answer.

THE COURT: You opened the door to this.

Overruled.

Q And at that direction you proceeded to go to the Bronx police station and then thereupon place Mr. Warme under arrest for violation of a federal criminal statute, correct?

A Yes, sir, that is correct.

Q Special Agent Vezeris, at the time Mr. Warme was being interviewed by yourself was he handcuffed in that investigation at the Secret Service?

A No, sir, he was not.

Q Was he restrained in any way?

A No, sir, he was not.

Q Was he threatened?

A No, sir, he was not.

Q Bound?

A No, sir.

Q Did he at any time ask the opportunity to go and sleep?

A No, sir, he did not.

Q Did he ask for food?

A No, sir, I don't recollect -- I don't believe he did.

Q And at such times that he might have asked for a telephone was he offered the opportunity to use one?

A Yes, he was.

MR. NAFTALIS: No further questions.

RECROSS EXAMINATION

BY MR. WEINGARD:

Q Just a question of two. When the attorney arrived at the office, was he permitted to see his client immediately?

A Yes.

Q Or was he kept outside, excuse me, let me finish. Was he kept outside the room where my client and at that time his was seated?

A I believe he was permitted to see him as soon as he came into the office. I don't know if there was a slight delay there or what. Nevertheless, as soon as I was aware there was an attorney present as far as I was concerned he was allowed to see your client.

Q Were there any further efforts made on the part of yourself or any of your fellow agents to have my client sign the statement after it was typed?

A After it was typed?

Q Yes.

A Prior to the attorney arriving?

Q Yes.

A Yes, sir, he was asked to sign it prior to the attorney arriving,prior to him speaking to the attorney.

Q Was it that he spoke to his attorney by telephone and refused to sign after that telephone call --

THE COURT: This is not proper recross examination. You have gone on at great length in prolix fashion into a variety of things. This has nothing at all to do with the redirect examination.

MR. WEINGARD: May I be permitted then to reopen my cross examination?

THE COURT: No, I don't think it is necessary. It has been very prolix and very detailed. You are now going

into areas that do not bear on the subject of the suppression at all.

MR. WEINGARD: I will abide of course by this Court's determination.

Just one further thing.

Q With respect to interrogation, you said my client had not been handcuffed, is that so?

A During questioning.

THE COURT: He didn't say that. He said that during the interrogation he wasn't handcuffed.

BY MR. WEINGARD:

Q Yes, that is my question.

THE COURT: That was not your question.

Q Was he handcuffed during the interrogation?

A No, sir, he was not.

Q Do you have any recollection that he was handcuffed by one arm to the chair where he was seated?

A No, sir.

Q You have no recollection or are you saying it did not happen?

A To my recollection he was not bound by handcuffs in any way at the time.

Q Thank you.

THE COURT: Step down.

(Witness excused.)

MR. NAFTALIS: The United States calls Special Agent George Hemmer.

MR. WEINGARD: Judge, may we have the special agent advised not to discuss this matter with any of the other witnesses in the witness room, please?

THE COURT: The other remaining witnesses being called to the stand now, do you want that restriction against the stenographer, too?

MR. WEINGARD: The stenographer and there is a detective who I may have to put on the stand, yes, Judge, please.

THE COURT: Just a moment.

Mr. Clerk, get the witness in, the previous witness here.

At the request of the attorney for the defendant, I instruct you not to discuss your testimony with anybody else in the other room and indeed I know of no further need for your time here. You can go back to your office if that is what you want to do.

Do you need him for any other purpose?

MR. NAFTALIS: I would like to talk to him, your Honor, but I can reach him at the Secret Service office.

MR. VEZERIS: Thank you, your Honor.

THE COURT: Why don't you take a walk out in the hall, then, somewheres.

THE CLERK: Please take the stand, sir, remain standing and raise your right hand.

G E O R G E P. H E M M E R, called as a witness by the Government, being first duly sworn, testified as follows:

THE CLERK: Please be seated and state your name.

THE WITNESS: George P. Hemmer, Jr.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. NAFTALIS:

Q Mr. Hemmer, by whom are you employed?

A I am employed by the United States Secret Service, Treasury Department special agent.

Q Drawing your attention to March 1st of this year were you working for the Secret Service at that time?

A Yes, I was.

Q What was your field office and what squad were you assigned to?

A I was assigned to the New York field office Counterfeit Squad.

MR. WEINGARD: Excuse me for a moment, Judge, I don't mean to interrupt, but my client has a personal

problem and asks to be permitted to leave the room for a moment. It should not take too long, may we have a very short recess, please.

THE COURT: All right.

MR. WEINGARD: Thank you very much.

(Recess.)

Q Special Agent Hemmer, on the 1st of March, were you sent on an assignment by your superior at the Secret Service?

A Yes, I was.

Q What was your assignment on that day?

A My assignment was to proceed with John Vezeris, who is another agent, to the Bronx, 9th Homicide Division, and speak to a Detective Koslowski.

Q About whom or about what were you supposed to speak to Detective Koslowski?

A Detective Koslowski had one Richard Warme in his custody. We were to speak to the detective and to take Mr. Warme into our custody.

THE COURT: Get right down to the subject of the statement which it is sought to be suppressed instead of proving to me that Magellan sailed around the Cape of Good Hope.

MR. NAFTALIS: I am, your Honor.

Q Did there come a time that you brought Mr. Warme to the offices of the Secret Service?

A Yes, sir, there was.

Q I am going to show you Government's Exhibit marked in evidence as No. 1 and ask you if you can identify that document.

A This document is a form, Secret Service form which is numbered by the Secret Service as 1737. It contains a printed warning of rights, consent to speak. It is signed by Mr. Warme, John Vezeris and myself and is dated March 1, 1976, 12:35 p.m.

Q Special Agent Hemmer, were you there when that form was executed by Mr. Warme?

A Yes, sir, I was.

Q Incidentally, do you see Mr. Warme in the courtroom today?

A Yes, I do.

Q Would you point him out, please?

A The fellow in the tan leisure suit with the printed shirt.

MR. NAFTALIS: Mr. Weingard, do you concede that he has identified your client?

MR. WEINGARD: Of course.

Q Special Agent Hemmer, prior to the execution

of this warning and consent to speak form, did you or your brother agent advise Mr. Warme of his constitutional rights, the rights contained on that document?

A The rights that are contained and listed on this document were read to Mr. Warme.

Q Had he been prior to the submission of this document to him, had he been advised of his rights by you or your brother agent?

A Orally.

Q Special Agent Hemmer, I also show you Government's Exhibit marked into evidence as No. 2 and ask you if you recognize that document?

A This is another Secret Service form. It is an affidavit. This is the substance of a statement that was given to myself and Agent Vezeris on that same date.

Q Who gave you that statement?

A Mr. Richard Warme.

Q At the top of the statement there is a printed statement, could you indicate that to the Court exactly what that is?

THE COURT: I have read it.

Q Mr. Hemmer, at the time that that statement was made orally to you and Special Agent Vezeris, was Mr. Warme tied up or bound in any way?

A No, he was not.

Q Was he restrained in any way?

A No, he was not.

Q During the course of your conversation with him in which he made these statements, were any threats made against Mr. Warme?

A No.

Q Were any promises made?

A No.

Q Were any denials made of requests for food or water that he might have made to you?

A No.

Q In fact, did he make any requests to you for food or water?

A I believe he may have had a cup of coffee.

Q But did he request food from you?

A No, I don't believe so.

Q Was he given the opportunity to make telephone calls?

A Yes, he was.

Q That offer was made to him by yourself or brother agents of the Secret Service in your presence?

A Yes, it was.

Q Did Mr. Warme exercise that right and use the

telephone?

A I believe he did.

Q Did you personally make any threats or promises to Mr. Warme in order to obtain this statement?

A I did not.

Q Was this statement given voluntarily?

A Yes, it was.

MR. WEINGARD: I am going to move to strike the answer.

THE COURT: Objection is sustained. Strike the answer.

Go ahead.

Q Mr. Hemmer, you have had an opportunity to read this typed statement, have you not?

A Yes, I have.

Q To the best of your recollection, does it comport with the statements made orally to you and to Special Agent Vezeris by Richard Warme on March 1st in the offices of the Secret Service?

MR. WEINGARD: Objection as to form.

THE COURT: Overruled.

A Yes, it does.

MR. NAFTALIS: No further questions, your Honor.

CROSS EXAMINATION

BY MR. WEINGARD:

Q Agent Hemmer, when you first got to the police station, New York City police station, how long did you wait before you went in and saw my client?

A I would say approximately ten minutes perhaps, 15 minutes.

Q During that time you were speaking to New York City Police detectives, is that correct?

A That is correct.

Q Detective Koslowski in particular?

A And others.

Q When you first saw my client, did you have some conversation with him at that time?

A I did not directly, no.

Q Who had conversation with him?

A Vezeris.

Q Did you have occasion to place him under arrest at that time?

A Yes, sir.

Q Did you advise him of his rights in any fashion?

A He was orally advised of the same rights that are contained on that form.

Q Did you do that or did Hemmer do that, I'm sorry,

did Hemmer do that, yourself, or did Vezeris?

A I believe Vezeris.

Q Well, do you believe or do you recall?

A I recall that Vezeris did in the station.

Q Did you have any conversation with my client directly or was it all Agent Vezeris?

A No, I made some statements.

Q As best as you can recall tell us what you said to him and what my client said to you at that time?

A In the station he was advised of his rights. He was placed under arrest. At the office and perhaps on the way to the office he was questioned concerning counterfeiting.

Q When you say he was questioned concerning counterfeiting on the way to the office, you are talking about in an automobile, I take it?

A Yes.

Q What kind of a car is that, if you recall?

A I can't recall if it was my car or Vezeris' car.

Q What kind of car do you drive and what kind of car does he drive?

A I was driving at that time a 1972 Chevy Supersport.

Q And his car is --

A His car at that time I believe was an Eldorado Cadillac.

Q In any event, my client was handcuffed, I take it, by the time you took him out of the precinct stationhouse?

A He was handcuffed in the precinct and handcuffed on his way down to our office.

Q While you questioned him in the automobile, where was he seated,in the front seat, back seat?

A He was seated in the rear.

Q Was one of the agents seated with him at that time?

A No, both myself and Vezeris were in the front.

Q I assume his hands were cuffed in back of him at that point?

A Yes, sir.

Q You say that you started to question him in the automobile, what did you ask him at that time?

A We spoke to him. I recall speaking to him in the automobile.

Q What questions did you put to him at that time about counterfeiting, as you indicated?

A I believe he was also advised of his rights while he was in the car.

Q Do you believe or do you recall?

A I recall.

Q Okay. What was he told at that time?

A He was told he would be spoken to concerning counterfeit violation when we got to our office.

Q You say that he was questioned in the automobile concerning counterfeiting, what questions did you ask him concerning counterfeiting in the automobile?

A I cannot recall exactly what questions were asked. He was not questioned in depth. General questions were made to him.

Q Did you ask him if he was involved with Jimmy Heimerle at that time?

A I don't believe so.

Q Did you ask him if he was involved with Bernie Horwitz?

A I don't believe so.

Q Did you mention the name Peters in the automobile?

A No.

Q Did you ask him if he realized that you had a lot of evidence against him in connection with your investigation?

A I believe that was stated in the automobile.

Q And you indicated in the automobile, I take it, that he was facing a lot of time in connection with this case and that he should cooperate with you, is that correct?

A That is also possible.

Q Didn't you ask for his cooperation at that time?

A I believe so.

Q You told him, did you not, that if he didn't cooperate things would go harder for him than if he did cooperate?

A I can't say that it was stated in those terms.

Q What terms did you use?

A I can't recall.

Q Give us your best recollection.

A I can't recall my exact language.

Q Did you imply to him that if he didn't cooperate, he would be facing a much more severe possible sentence than if he did cooperate?

A No.

Q Did you imply to him that he would be facing more severe charges?

A No.

Q Did you make any reference at all concerning the fact that things would go more severely for him, or more harshly for him if he didn't cooperate than if he did cooperate?

A No.

Q What did you say to him?

A We advised him that his cooperation may work to his benefit.

Q What did you mean by that?

A That is exactly what he was advised.

Q When you say it may work to his benefit I assume that that means that he would get some advantage if he cooperated as opposed to no advantage if he didn't cooperate, is that correct?

A No, I believe it was just a general statement.

Q You meant nothing by it when you said it?

A In general terms or when we were down at the office.

Q In the car?

A In the car?

Q Yes.

A When I was in the car?

Q Yes.

A When it was said -- what was meant was that if he cooperated with the Government, this would be brought to the attention of either the U.S. Attorney or the Court or whomever.

Q You had known when you had him in the automobile that he had been detained at the precinct stationhouse since about 2:00 or 3:00 o'clock in the morning of the day before, correct?

A Correct.

Q You knew that he hadn't been sleeping all that time he was down in the precinct stationhouse, correct?

A That I didn't know.

Q You had been told that he had been interrogated in connection with what you believed to be a related matter, since 2:00 or 3:00 o'clock in the morning, correct?

A I do not know the exact time he was picked up. I do not know what went on at the stationhouse. I was not there.

Q But you were told that he had been interrogated by the New York City Police Department?

A Yes.

Q You had been told that he was picked up during the early morning hours?

A Yes.

Q You knew that he had been interrogated during that period of time in the precinct?

A Correct.

Q You knew that the City police were turning him over to you at that time, is that so?

A That is so.

Q There was no question that he was free to go, he was handed over to you, right?

A We placed him under arrest.

Q And that was because your office had received a phone call from Detective Koslowski, correct?

A Correct.

Q Did my client make any statement, any admissions to you in the automobile?

A At the time he was in the automobile, he was more or less told that we will talk about the whole thing at the office.

Q That wasn't my question. Did my client make any statements to you in the automobile?

A He made statements, yes, I can't recall what they were.

Q Did he admit to being involved criminally in the context of your investigation in that automobile?

A I can't recall.

Q You can't recall whether or not a man who was being arrested for --

THE COURT: Don't keep on repeating the answers, will you please? Go forward instead of sideways all the time.

MR. WEINGARD: Yes, sir.

Q Is it your testimony that he did not make a statement or that you cannot recall whether he made such a statement?

[70] Hemmer-cross

A I believe I said I cannot recall.

Q Did he indicate to you that he wanted to talk to his wife at that point?

A I can't recall.

Q Did he indicate to you that he wanted to talk to his lawyer or call a lawyer at that point?

A I don't recall that either.

Q Does the name Muccio mean anything to you, Muccio?

A Muccio? No.

Q When you arrived at the office, I assume my client was still cuffed behind his back, is that correct?

A Upon the arrival?

Q Yes.

A Yes.

Q Is that correct?

A Yes.

Q When you got into the office, I assume he was searched?

A I believe he was patted down before he was taken out of the precinct.

Q When he got to the office he was searched more thoroughly?

A I believe he may have been asked to take his personal items out of his pockets, yes.

Q And I assume his personal items were handed over to one of the agents for safekeeping, is that so?

A I believe they stayed right in the room.

Q I can't hear you, I'm sorry.

A They were right there on the table.

Q Did there come a point when his personal items were looked at by either yourself or one of the other special agents or one of the ancillary personnel assigned to the Secret Service?

A I believe so, yes.

Q Did there come a point when certain items contained in his wallet were photocopied?

A I believe so.

Q What?

A I believe so.

Q There came a point when the wallet and other personal effects were returned to my client, is that correct?

A Yes.

Q There came a point when you asked my client to sign a statement, or a voucher indicating that he had received back his personal effects and that they were in the same condition as they had been in when he had given them to you for inspection?

A That I don't recall.

Q But that is part of the normal procedure, is it not?

A Part of the normal procedure, yes.

Q Do you have such form, do you know?

A A form? No.

Q In other words, it is just a statement that is handed to him, a receipt statement?

A It could also be an envelope that it was contained in.

Q But it is standard that you sign such a document, is that correct?

A If property is removed and not returned at that time, yes.

Q Also if property is returned, is that so, to demonstrate that the property was in the same condition when returned as when it was seized?

A Correct.

Q When you got back to the office, my client was placed where?

A In an interview room.

Q That is a room with a two-way mirror, correct?

A Yes.

Q About 15 feet by 15 feet?

A The mirror?

Q No, the room.

A Yes.

Q Does it have a table and chair in there?

A A desk.

Q A desk and how many chairs, if you know?

A Various, it could be three, four.

Q When he was placed there, I assume that the cuffs were taken from behind his back and he was cuffed from the wrist to the chair, is that so?

A Possibly,or no cuffs at all.

Q Do you recall which it was?

A I don't recall.

Q But it is certainly not unusual to put handcuffs from one wrist to a chair leg?

A No.

Q Correct?

A Correct.

Q That is done directly?

A Sure.

Q It is a safety factor, is it not?

A Correct.

Q During the course of -- incidentally, how long did he remain in that room, if you remember?

A I would say perhaps two hours.

Q During the course of that two hour period, was he interrogated?

A Yes, he was.

Q From the beginning of the two hour period to the close of the two hour period?

A Sporadically.

Q You were present throughout that entire two hour period?

A No.

Q Were other officers or agents present throughout that two hour period?

A Somebody was at all times.

Q He was never left alone?

A He may have been if he was handcuffed to the chair.

Q During the course of that two hour period you were the one conducting the primary aspect of the interview, is that correct?

A Myself and Agent Vezeris.

Q Were you asking most of the questions or was he, if you know?

A We were both asking questions.

Q You were the agent who conducted this investigation primarily, weren't you?

A I don't understand your question.

Q Let me rephrase it.

You were the agent in charge primarily of this investigation, correct?

A No.

Q Was it Vezeris who was primarily in charge of the investigation?

A No.

Q May I ask the name of the agent primarily in charge of this investigation?

A We work on a squad concept. Everybody works on an investigation.

Q You had been working on this particular investigation for some time, is that right?

A Correct.

Q Indeed you had made certain arrests in connection with the investigation prior to the arrest of my client, correct?

A Correct.

Q You had arrested,by way of illustration, James Heimerle, is that so?

A Correct.

Q Bernard Horwitz?

A Correct.

Q A Mr. Peters?

A Correct.

Q You had taken various statements from them, is that so?

A That is correct.

Q You had statements from these individuals with you during the course of examining my client, is that correct?

A I can't recall if I had statements in front of me, no, sir.

Q Did you have notes concerning those statements with you?

A I may have had a file.

Q That file would contain the statements that these people made to you or other agents?

A No.

Q As part of your seeking the cooperation of my client did you tell him you had these statements?

A I believe so.

Q Did you tell him that they had all involved him in connection with this particular scheme or conspiracy?

A I believe so.

Q Did you tell him that unless he cooperated he was facing 20 or 25 years?

A I don't know if it was phrased that way.

Q But that was the essence of it?

A Possibly. I am also confused as far as the time period.

Q In the room?

A Pardon me?

Q In the room?

A No, as far as the arrests. Whether he fits into the chronological order.

Q But in any event, you did tell him that you had statements from other individuals and that they involved him and that if he didn't cooperate he was facing 20 or 25 years, correct?

A I did not say that exactly, no.

Q But that was the essence of it?

A In part.

Q Which part doesn't fit?

A He was told that we had statements from other individuals, correct. Now what he faced --

Q Do you recall saying something on the order of -- that you had him tight, that everybody had involved him and that he could help himself by confessing?

A He was told that we had information concerning him, yes.

Q Did you tell him that if he didn't confess he was

going to do 20 years?

A No.

Q Do you remember at any time during the course of this interrogation, Mr. Warme saying, "Look, if you have me so tight let me go lay down, lock me in the jail, to go to sleep"?

A No.

Q Do you remember him saying, "If you have me so tight, leave me alone."

A No.

Q Do you remember anything like that?

A No.

Q Do you remember his asking you to lock him up?

A No.

Q To let him sleep?

A No.

Q You have no such recollection?

A No.

Q Is it your testimony that you don't recall those incidents or that they never happened?

A I don't recall.

Q Is it possible that they may have happened?

A They may have happened, I don't recall. Altogether or one of each?

Q Any of them?

A Possibly.

Q Which one may have happened?

A I already stated I was not in the room the entire time.

Q While you were in the room, do you have any recollection of my client asking you to let him lay his head down? While you were in the room, not while anybody else was there, while you were there?

A No.

Q Are you positive of that?

A Yes.

Q Do you have any recollection of my client saying, "Look, if you have so much evidence against me then lock me up, I don't have to confess, lock me up"?

A He was already locked up.

Q Do you have any recollection of his making reference to the fact that he should be put in some sort of cell and be left alone?

A No.

Q But it may have happened?

A It may have happened.

Q Tell us exactly what you first said to my client when he got into that room and what, if anything, he said

to you?

A I cannot tell you exactly what I said six months ago or whatever.

Q Did you make any notations of your interrogation?

A The statement is the only notation that I have.

Q Did you make any other notes at all, personal notes?

A I don't believe so.

Q You said you had a case file.

Did you make any notations and include them in the case file?

A The only thing that would appear in the case file would be reports.

Q Did you make any reports of this interrogation?

A I did not, no.

Q Did any of the other agents in your team make any reports of which you are aware?

A I believe Mr. Heavey did, my supervisor.

MR. WEINGARD: May I have that report produced?

Q As best you can recall, without being overly specific if you can be, what did you say to my client when he got into that room?

MR. NAFTALIS: Your Honor, I think this is repetitive.

THE COURT: It is thoroughly repetitive and it is aimless.

Go ahead and answer his question again.

A Would you repeat the question.

THE COURT: What did you say to him when you first started talking to him in the interrogation room?

THE WITNESS: I have no idea, your Honor.

THE COURT: All right. But there came a point, did there not, when my client asked for his lawyer.

THE WITNESS: I believe so.

Q That was during the course of your questioning him, is that so?

A Yes.

Q What did you tell him at that time?

A I can't recall, but I know he made a phone call. Who he called -- I don't know.

Q When you first got down to the office and he was first placed into the interrogation room, didn't he ask you for his lawyer at that time, that he be permitted to call his lawyer at that time?

A I don't recall.

Q Is it your testimony that it didn't happen or you don't remember if it did?

A I just said I don't recall.

Q Is it fair then to say that he might have asked you for his lawyer?

MR. NAFTALIS: Objection, your Honor.

THE COURT: I am not interested in what is fair, I want to know what is accurate.

Q Is it accurate to say that he could have asked you?

MR. NAFTALIS: Objection, your Honor, speculation.

THE COURT: Next question.

Q Can you give us some sort of indication as to when he first asked to be permitted to talk to his lawyer?

A No, I do not.

THE COURT: Was it after he made the statements that are recorded that he asked for the lawyer or was it before?

THE WITNESS: Your Honor, I can't recall.

THE COURT: He made some statements. There was a stenographer called in, right?

THE WITNESS: Right.

THE COURT: He asked for a lawyer before that or did he ask for a lawyer after he had dictated the statements to the stenographer, that is what he wants to know.

THE WITNESS: He may have asked during.

THE COURT: When he asked for a lawyer, did you suspend the statements, or did you keep right on going and say nothing doing?

THE WITNESS: Your Honor, as far as the sequence of events, I am not positive.

THE COURT: If a man asks you for a lawyer, do you continue questioning him or do you stop the questioning?

THE WITNESS: Usually he is permitted to call.

THE COURT: That means that you stop the questioning and he is permitted to call, is that what you do?

THE WITNESS: Sometimes.

THE COURT: Will you brush him off and say never mind all of that, just answer my questions?

THE WITNESS: If he emphatically wants a lawyer he is allowed to call him or contact him or whatever, or he is allowed to stop the questioning. That is part of his rights.

THE COURT: That is what he wants to know.

THE WITNESS: He was quite aware of the fact that he could stop the questioning at any time.

MR. WEINGARD: Move to strike the last portion of that answer.

THE COURT: Motion denied.

Did this man at any time ask for anything that would require stopping the interrogation?

THE WITNESS: I don't believe so, no.

MR. WEINGARD: Judge, most respectfully I must object to the last question.

THE COURT: All right, overruled.

Go ahead with your questioning.

THE COURT: You have been circling and circling and circling and I would like to get this on the record properly.

Q Before the stenographer came in and while you were questioning him, did there come a point when he indicated to you he didn't want to talk to you any more?

A No.

Q Did he make any indication during that particular time that he wanted to lay down?

A Not that I can recall.

Q When the stenographer came into the room, did you dictate to the stenographer?

A No, I did not.

Q Who dictated to the stenographer?

A Vezeris.

Q Vezeris dictated to the stenographer. And then

after the stenographer left the room, I take it that you continued to question my client?

A No.

Q The questioning stopped at that point?

A I was not in the room.

Q Do you know whether the questioning stopped at that point?

A No.

Q Did there come a point when you returned to the room?

A Yes.

Q And there came a point when the typed statement was presented to my client, is that correct?

A Correct.

Q There came a point when he refused to sign it, is that so?

A Correct.

Q Before he refused to sign it he read it, is that correct?

A Correct.

Q And he said to you I am not signing this, is that so?

A Correct.

THE COURT: Did he say to you that it was untrue?

THE WITNESS: No, sir.

THE COURT: What did he say to you as to why he wasn't going to sign?

THE WITNESS: He was advised by his attorney.

THE COURT: He had made a telephone call in the meantime?

THE WITNESS: I believe so.

Q Do you know whether or not a lawyer arrived at the office?

A I can't recall.

Q Do you have any recollection of having conversation with the defendant concerning the fact that there was a lawyer outside who wanted to see him?

A I believe the lawyer accompanied us over for arraignment,when he arrived I am not sure.

Q Do you have any recollection of seeing the lawyer and the defendant Mr. Warme together before you left the office?

A No.

Q Do you have any recollection of Mr. Warme requesting that the lawyer be permitted to see the statement or anything of that sort?

A No.

MR. WEINGARD: May I have a moment, Judge, please?

No further questions.

THE COURT: All right step down.

Next witness.

(Witness excused.)

MR. NAFTALIS: Your Honor, the United States calls James Heavey.

MR. WEINGARD: Judge, may we have the same admonition to this witness concerning not discussing the case?

THE COURT: There are no other witnesses out there, are there?

MR. NAFTALIS: There is another witness the Government is not going to call.

MR. WEINGARD: I may call a potentially hostile witness, Judge.

THE COURT: That is up to you. I can't compel people to stop talking. I can compel them to stop talking if they are going to be called by the Government. You want to go and talk to anybody, you can talk to them, they can talk to them. There are no gag rules around here.

Take the stand.

J A M E S E D W A R D H E A V E Y, called as a witness by the Government, being first duly sworn, testified as follows:

THE CLERK: State your name.

THE WITNESS: James Edward Heavey.

THE CLERK: H-e-a-v-e-y. Thank you.

DIRECT EXAMINATION

BY MR. NAFTALIS:

Q Special Agent Heavey, you are the supervisor --

THE COURT: You can just go out there and tell this last witness not to discuss the matter with any prior witness or any other person.

MR. WEINGARD: Thank you, sir.

THE COURT: Thoroughly unnecessary and merely theatrical.

Go ahead.

Q Mr. Heavey, you are the supervisor of the Counterfeiting Squad for the Secret Service of the New York field office, is that not correct?

A Yes, sir.

Q Assigned to you for those purposes on March 1st among other agents included Special Agents John Vezeris and George Hemmer, is that also correct?

A Correct.

Q Mr. Heavey, did you send those two special agents to a police station in the Bronx, New York in order to arrest one Richard Warme?

A Yes, sir, I did.

Q You ordered them to go there after you had spoken with the Strike Force in Southern District of New York who had authorized you to go forward to have Mr. Warme arrested for violating a statute under Title 18 United States Code, is that also correct?

MR. WEINGARD: Objection, sir.

THE COURT: I don't know what the point of all this is. What has that got to do with the suppression?

MR. NAFTALIS: Your Honor, I am coming to that right now.

THE COURT: Then get there.

Q Special Agent Heavey, I ask you if you know a man named Richard Warme?

A Yes, sir.

Q Do you see him in the courtroom?

A Yes, sir, I do.

Q Would you please indicate who he is?

A The gentleman in the tan leisure suit.

Q Special Agent Heavey, did you see Mr. Warme in your offices on March 1st of this year?

A Yes, sir, I did.

Q He was there because he had been arrested at your direction?

A Correct.

Q After consultation with the United States Attorney's office?

A Yes, sir.

Q Mr. Heavey, do you know whether or not Mr. Warme had been interviewed by special agents of the Secret Service?

A Yes, sir, he was.

Q Were you there during any portion of the interview of Mr. Warme at the offices at the World Trade Center?

A I was there at times during the interview.

Q During the times that you were there was Mr. Warme bound in any way?

A No, sir, he was not.

Q Was he threatened by any agents?

A Not to my knowledge.

Q Did you personally threaten him?

A No, sir, I did not.

Q Did you personally hit or threaten him in any way at all?

A No, sir, I did not.

Q Do you know or have any personal knowledge of any incident where any agent did that?

A No, I don't.

Q Do you have any knowledge or did you personally see Mr. Warme bound or tied to any chair or other article of furniture in the interviewing room during the times that you were in there?

A No, I don't recall.

Q Is it your usual practice to bind and tie defendants in the witness rooms?

A No, we do not.

Q As a general rule you don't?

A That is correct.

Q Special Agent Heavey, I show you Government's Exhibit marked into evidence as Exhibit No. 2. Do you recognize this?

A Yes, sir, I do.

Q Did you see it on the 1st of March of this year?

A Yes, sir, I did.

Q Did you examine it in the presence of Mr. Warme on that date?

A I did.

Q Could you please indicate to the Court exactly what the circumstances were and any exchange you might have had with Mr. Warme on that date concerning that printed statement?

A This was a statement that was given to me by

Special Agent Vezeris which he had obtained from Mr. Warme on that particular date. I initialled the top of it and put the file number on it. I spoke to Mr. Warme, asked him if this was the statement he had given. He stated it was. I said is it true and he said it was.

MR. WEINGARD: I am going to object. I don't think that that is relevant.

THE COURT: Overruled.

A I asked Mr. Warme if he wanted to delete anything or make any additions, he said no, the statement was a statement he had given to Vezeris.

Q Did he indicate at that time whether or not he intended to sign it?

A He stated to me that his attorney told him not to sign it, however he did want to cooperate with the Government and may consider endorsing it at a later date.

I said that is your prerogative, you have an attorney now.

Q Did he have an attorney at the World Trade Center at that time?

A Yes, the attorney was there when I spoke to him about this particular statement.

Q When the attorney arrived after identifying himself and after indicating that he represented Mr.

Warme, was he given access to Mr. Warme?

A Yes, he was.

Q Special Agent Heavey, during the time --

A However his attorney wasn't present in the room when I spoke to him, he had left.

MR. WEINGARD: I'm sorry.

A However, the attorney wasn't in the room when I spoke to Mr. Warme.

MR. WEINGARD: Was not.

THE WITNESS: He wasn't in that particular room. He had left the room and gone to the lobby area of our office.

Q Special Agent Heavey, during the times that you were present in the room when Mr. Warme was being questioned, did he at any time ask to see his lawyer?

A Not to me, no.

Q Did you overhear -- did he state to you or did you overhear him at any time request that the agent stop interrogating him?

A No, sir, I did not.

Q During that time did you ever overhear him say to yourself or other agents that he was tired and he requested the opportunity to sleep? Did he ever make that request of you or other agents?

A Not to me.

Q Did you overhear him make any such statement to any agent?

A I don't recall the statement made in my presence.

Q Special Agent Heavey, to you or in your presence, did you hear Mr. Warme at any time request that the agents cease their questioning and lock him up?

MR. WEINGARD: Excuse me. I am going to have to object.

THE COURT: I don't know why you are asking these questions. I am utterly amazed. Objection is overruled.

Q Final question, Special Agent.

THE COURT: It sounds to me like you are trying to prove their case.

Q Special Agent Heavey, did you personally make any promise or offers to Mr. Warme, or inducements to Mr. Warme during the time that you were present during the time that he was being interviewed by the agents?

A No, sir.

MR. NAFTALIS: No further questions.

THE COURT: Any cross examination?

MR. WEINGARD: Yes, of course.

CROSS EXAMINATION

BY MR. WEINGARD:

Q Mr. Heavey, when you first saw Mr. Warme, he was being brought into the office, is that correct?

A No.

Q He had already been put into the room?

A He was in the room speaking to the agents at the New York field office.

Q About how long had he been there, if you know?

A I don't know, counsel.

Q Could it have been at the close of the interrogation or at the beginning of the interrogation that you first saw him?

A I walked in twice while he was -- I believe he was dictating to the secretary a statement.

Q Are you saying that he was dictating or are you saying that --

A He was giving a statement and the secretary, my secretary was writing down in a shorthand statement.

Q That was being dictated by the agents, is that correct?

A The agents were talking to the secretary also but he was also speaking so you know, I walked in, I asked the agent had he been advised of his rights, the agent

said he had, I said fine, I walked out.

I came in one other time and walked out and then a third time I spoke to Mr. Warme was when Vezeris handed me the statement that had been typed up by the secretary.

Q Did Vezeris indicate to you that Mr. Warme would not sign that statement?

A Yes, he did. He stated that he had read it and refused to sign it after speaking to his attorney.

Q Was the attorney present at the office at that time?

A Yes, I am sure, yes, he was. Yes, he was there with I believe someone else.

Q Was the attorney able to see Mr. Warme at that time?

A Yes, he had already spoken to Mr. Warme when I walked in with the statement, counsel.

Q Do you know whether or not Mr. Warme declined to sign before the lawyer arrived or after the lawyer?

A I believe it was after, to my knowledge it was after the attorney had spoken to him and he had read the statement and told him not to sign it.

Q But you have no direct knowledge of that, do you?

A I can only tell you what Mr. Warme told me.

Q Do you have any direct knowledge from your own observations?

A No, I don't.

Q When you first walked into that room, did you notice whether Mr. Warme while he was not bound and gagged and tied, did you notice whether his hand was handcuffed to the side of the chair in which he was seated?

A I didn't notice it, no.

Q It is possible that it was?

A I don't think so.

MR. NAFTALIS: Objection, your Honor, this is speculation.

THE COURT: Did you answer the question?

THE WITNESS: I said I don't think so.

THE COURT: That is what I thought you said. You said you don't believe he was.

Q Did you participate at all in asking questions of Mr. Warme?

A I might have asked him one question or said something to him but I didn't participate in the interview, no.

Q Do you recall what the question was and what his response was?

A No, I don't, counsel.

Q Did he say anything which you viewed to be incriminatory to you? Do you understand what I just asked?

A I don't understand the question.

Q Did he say anything to you which you viewed to be an admission?

A I didn't question him during the interview.

Q Were you present when the so-called warning of rights, warning and consent to speak form was executed?

A No, sir, I was not.

Q So you don't know what happened at that point, do you?

A No, sir, I do not.

Q Did you observe any of the agents withholding Mr. Warme's property, his wallet, papers, effects?

A I could have. As I say I was going in and out of the room. I don't recall anything specific.

Q When property is returned, is it the practice of your office to obtain some sort of a receipt for returned property?

A When it is returned to a defendant?

Q Yes.

A Normally we have him sign something unless it is turned over to his attorney or U.S. Attorney's office.

Q But you normally have him sign something indicating that he received back the property in the same way in whichyou had originally gotten it, is that not

correct?

A Correct.

Q But that is not required?

A No, it is not required. As I said depending -- I usually require it especially when there is money involved.

Q When there is no money?

A No, normally I don't --

Q Unless there is money involved, you don't keep such forms around, do you?

A Only unless it was -- we considered it part of the case, some significant ID or something of that nature. We feel it is part of the case, could be used possibly in proceedings, then we would keep it.

MR. WEINGARD: Thank you very much.

MR. NAFTALIS: No redirect, your Honor.

THE COURT: Thank you. You may step down.

MR. NAFTALIS: The Government rests, your Honor.

THE COURT: Is there any evidence you intend to present, Mr. Weingard?

MR. WEINGARD: Yes, Judge.

THE COURT: Produce it. Go right ahead.

MR. WEINGARD: Your Honor, I have an application.

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There is a New York City Police detective by the name of Detective Koslowski, Kowalski, who is here today. He had been brought down at my request for the purpose of potential use by me as a witness. The detective, however, I view to be a potentially hostile witness. He is involved in an investigation of my client in Bronx County and he was involved in the interrogation here.

I would ask that he be deemed to be and treated as if he were a hostile witness so that I can cross examine him.

THE COURT: Put him on the witness stand and we will see.

MR. NAFTALIS: Your Honor, if we may, I think there is going to be one problem with respect to the examination of Detective Kowalski; Mr. Weingard and I spoke earlier this week when a date was set for this hearing in which he asked me if I could produce him.

THE COURT: Get right down to the point.

MR. NAFTALIS: He also asked me if I could ask to have brought down here the entire case file concerning Mr. Warme and the investigation being conducted by the District Attorney's office in the Bronx and the Homicide Squad of the pertinent police station -- police precinct.

I complied with this to save time but the

Government is going to indicate that Mr. Warme is presently under indictment in the Bronx for second degree murder and the Government wishes to limit that material which Mr. Weingard can examine that is in that file to any reports of the 1st of March and the night of February 29th when Mr. Warme was picked up. Otherwise we are getting a sensitive discovery in an unrelated criminal case, your Honor.

MR. WEINGARD: Judge, quite frankly, so that you perhaps can save some considerations or deliberations on this. I have no problem with that. I just would like to see the reports as they relate to the incidents of the night of his arrest and the day of his interrogation, that is all I am interested in.

THE COURT: I am not interested in anything to do with the other case. I am interested only in your application to suppress the alleged admissions and confessions here and that is what the examination will be limited to.

MR. WEINGARD: That is all I am interested in, Judge.

May we have the witness, please?

THE CLERK: Please take the stand, sir, remain

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standing. Raise your right hand.

J O S E P H K O Z L O W S K I, called as a witness by the Defendant Warme, being first duly sworn, testified as follows:

THE CLERK: Please be seated and state your name.

THE WITNESS: Detective Joseph Kozlowski, shield No. 2655. I am a detective with the New York City Police Department and I am assigned to the Homicide Squad in the Bronx, 9th Homicide Zone.

THE CLERK: Thank you, sir.

MR. WEINGARD: Judge, may I, before proceeding, just have a moment to look over this report which was just handed to me?

(Pause.)

MR. WEINGARD: I am ready, Judge.

DIRECT EXAMINATION

BY MR. WEINGARD:

Q Detective, just so that I don't stumble on your name, can you pronounce it for me, please?

A It is Kozlowski.

Q Kozlowski?

A Yes.

Q Detective Kozlowski, you are assigned to the 9th Homicide Squad, is that correct, in the Bronx?

A Yes.

Q That operates out of the 46th Police Precinct in the Bronx?

A That is correct.

Q Located in the vicinity of Grand Concourse?

A 181st Street and Ryer Avenue.

Q That is near the Grand Concourse?

A That is correct.

Q There came a point, did there not, when you had occasion to interrogate my client at the 9th Homicide offices?

A Yes, I questioned him.

Q Can you tell us when that happened, please?

A That happened on the morning of March 1st, approximately 3:40 in the morning.

Q March 1st. When you first located my client, can you tell us where that was?

A That was in his home in Irvington, New York.

Q You went up to his home, did you?

A That is correct.

Q Did you have a search warrant for that home at that time?

THE COURT: That is not necessary. Go ahead. You stick to this case.

MR. WEINGARD: Yes, indeed, I remember, Judge.

THE COURT: A search warrant has nothing to do with your suppression motion and I caution you to stick to this case.

MR. WEINGARD: All right, sir.

Q Did you have an arrest warrant for my client in connection --

THE COURT: That still has nothing to do with this case. We are not interested in the state proceedings.

MR. WEINGARD: If I may make an offer of proof.

THE COURT: You just make your offer of proof by proper questions. That question is ruled out.

MR. WEINGARD: Yes, sir.

Q Did there come a time when you and fellow officers actually entered my client's home?

A Yes, we did.

Q You had some conversation with he and his wife at that time?

A Yes, we did.

Q That was in reference to an investigation of the death of one Angelo Oliveri, is that correct?

A Yes, we did, sir.

Q Did you instruct my client to come with you down to the 46th Precinct stationhouse in the Bronx?

A No, I did not.

Q What exactly did you say to him and he to you?

A I requested he come with us.

Q What did you say?

A I asked him, I said, would you come with us, we are investigating a homicide of a friend of yours and there is a possibility that you could give us some assistance, and he said he would.

Q Did you tell him that you were investigating a homicide while he was at his home?

A Yes, I did.

Q The word homicide was used?

A Yes, I did.

Q Did you mention the name of the friend?

A Yes, I did.

Q What name did you give?

A Angelo Oliveri.

Q Was it necessary throughout the course of that evening for any of the officers to draw their revolvers?

A Absolutely not.

Q Never taken out of their holsters?

A Never.

Q Were your hands ever placed on your revolvers?

A Never.

Q Did there come a point when my client accompanied you to the 46th Precinct?

A There did, yes.

Q How did he get down there?

A We drove him down in the car.

Q Would that be in your automobile?

A Not my private automobile, it would be the Department automobile.

Q By the way, how many officers were with you when you first arrived at his house?

A There was three fellow officers with me and we had gone to Irvington Police Department because I couldn't find the location of his home and asked them to show us where he lived so there were two Irvington policemen who were outside at all times.

Q The Irvington policemen?

A Yes, they stood outside.

Q They were armed with shotguns, were they not?

A They had shotguns, yes.

Q Those shotguns were in their hands,were they not?

A I presume so.

THE COURT: Unless you come down to the matter of this thing, I will terminate your examination. You are disobeying what I told you to do.

MR. WEINGARD: All right, sir, I am trying not to --

THE COURT: I don't want you to try to do anything that is improper.

MR. WEINGARD: Yes, sir.

THE COURT: And what you are doing now is going into a matter that is not before me. You were repeatedly warned and I don't intend to warn you again without consequences.

MR. WEINGARD: Judge, so that I don't violate any of the tenets laid down by the Court --

THE COURT: You understand what I have to say and I am not going to define it for you any further.

MR. WEINGARD: May I just be heard very briefly.

THE COURT: No, ask your questions.

MR. WEINGARD: I don't want to get afoul of the Court with respect to it, but I believe I have relevant matter that has to be covered concerning the statement.

THE COURT: You just ask the questions and get down to the point. We will see whether there is anything relevant.

Q When you arrived at the precinct stationhouse, there came a point, did there not, when you started to interrogate my client, correct?

A I asked him to give me a statement as to his whereabouts the day before on the 29th and he said he would.

Q Before you did that, did you have any prior conversation with him?

A Yes, I asked him for some identification, he produced his learner's permit, New York State learner's permit, driver's license and I wrote down everything on the learner's permit, I informed him why he was here. Again, we wanted a statement and we requested his assistance in our investigation.

And I asked him if he could give me a statement as to where he was and he said he would and I wrote that statement down.

Q That was the extent of your questions of him at that time?

A Yes. Prior to that we shared a cup of coffee, I made coffee, we have a hot plate. We had coffee first and then we went into the statement.

Q But as far as you recall that was all you asked him and that is what he said?

A That is correct.

Q Nothing else you want to add to that?

A Not that I could recall.

Q All right. What time did you arrive down at the

precinct stationhouse?

A Approximately 3:40 in the morning.

Q What time did you finish questioning him?

A I would presume a quarter to 5:00, maybe 5:00 o'clock we finished with the statement. Then we went over his statement.

Q You went over his statement?

A I asked him questions about his statement, yes.

Q What did he say to you at that time?

A He repeated the same statement over to me.

Q What time did you finish those questions?

A I would say maybe in the vicinity of 7:00 o'clock in the morning.

Q Then what did you do?

A We shared another cup of coffee, we had several cups of coffee.

Q Then what did you do?

A Approximately 8:00 o'clock I called the Secret Service.

Q Did you go over his statement again?

A After that?

Q Yes.

A No, there was no need.

Q The statement that he gave you I take it was an

exculpatory statement, you know what that means?

A Would you explain it to me?

Q He gave you a statement?

THE COURT: You don't have to explain it. It has nothing at all to do with this case or anything to do with counterfeiting.

Did you question him about counterfeiting?

THE WITNESS: I did not, your Honor.

Q Did you question him concerning his relationship to one Angelo Oliveri?

A Yes, I did.

Q You are aware, are you not, that Angelo Oliveri is the name of an unindicted co-conspirator in connection with the counterfeiting case?

A At this time, yes.

Q You were aware that there was a counterfeiting investigation going on with the Secret Service on the day you interrogated him, did you not?

A Yes, I was.

Q Indeed, you called the Secret Service, correct?

A At 8:00 o'clock in the morning, I did.

Q How long after you placed that phone call did they arrive?

A. I would say in the vicinity of around 10:00

o'clock.

Q 10:00?

A Yes.

Q In the morning?

A Roughly.

Q About two hours after, is that correct?

A Approximately, yes.

Q Did Mr. Warme leave your sight at any time during the course of the period from 8:00 o'clock in the morning till 10:00 o'clock in the morning?

A No, sir.

Q He was in your squad room, correct?

A He was in the squad room.

Q I assume he was awake?

A Yes, he was drinking coffee.

Q Was he handcuffed?

A At no time, sir.

Q Did you tell him he was under arrest?

A No, sir.

Q Originally when you got to his house did you tell him he was under arrest?

A No, sir, I informed him that he was a target of an investigation and we would like to question him as to his whereabouts and if he knew Angelo Oliveri

and we would like a statement from him and he said he would give us a statement, he would come. He got dressed and he came with us.

Q Was he at any time placed in handcuffs?

A No, sir. Only by the Secret Service after they placed him under arrest.

Q Why did you call the Secret Service?

A Because I had received information from the deceased's wife that her husband had been arrested by the Secret Service and that he was working with the Secret Service.

Q Had you spoken with the Secret Service prior to calling them concerning this case?

A No, I did not.

Q Did you have any discussions at all with the Secret Service whatsoever relating to Mr. Warme prior to calling them that day?

A No, I did not.

Q When the Secret Service arrived, did you have some conversation with various special agents?

A Yes, I did.

Q During the course of those conversations did you indicate that you were releasing the defendant to them?

A I never placed the defendant under arrest.

Q Did you indicate that he was free to go with them and that they could arrest him?

A He was free, yes, he was free to go with them. They arrested him in my presence.

Q Were you present when they questioned him at the 46th Precinct?

A Yes, I was.

Q Can you tell us exactly what they said to him and he said to them?

A First they informed him that he was under arrest and gave him his rights which they read from a card. They asked him to make a statement and he was reluctant at that time to make a statement but they said to him, they searched him, strip-searched him, dressed him, put the handcuffs on and then left our office.

Q When you say he was reluctant to make a statement, what exactly did he say?

A Well, let's see, to the best of my recollection, he was considering it. He didn't actually come out and say he wouldn't make a statement. He was on the line of saying yes and on the line of saying no, he actually couldn't make up his mind what he wanted to do.

Q But he didn't make a statement at that time?

A To the best of my recollection, no, no formal

statement.

Q The impression that you had was that he was reluctant to make a statement, that is what you have testified to?

A No, I wouldn't say reluctant.

Q That is what you did say.

MR. NAFTALIS: Your Honor, I object, he didn't let him finish the answer.

THE COURT: You are not testifying, Mr. Weingard. Just remember that.

MR. WEINGARD: Yes, sir.

A In my opinion he couldn't make up his mind whether to make a statement or not make a statement.

Q He didn't at that time?

A He answered questions, he didn't make a formal statement. Nobody made formal notes.

Q He answered questions in your presence?

A Yes, there were certain questions asked him.

Q What questions?

A I don't recall, sir.

Q Questions concerning counterfeiting?

A I don't recall, sir, I know his name was asked, identification was asked of him. Things like that.

Q While you were questioning him during the course

of the early morning hours and into the morning of March 1st, did my client at any time indicate to you that he wanted to call his wife to find out how she was?

A No, sir.

Q Or that he wanted to speak with his attorney, Mr. Muccio?

A At no time, sir.

Q The name Muccio never came up in your conversations?

A No, sir.

Q Are you absolutely positive of that?

A Yes, sir, because I was quite surprised that he didn't ask for an attorney after being given his rights.

Q Do you know whether or not he asked for his lawyer when the Secret Service agents advised him of his rights in your presence?

A To the best of my recollection, no, sir.

Q So it is your testimony that he never did ask for a lawyer?

A As far as I am concerned, no, sir, never asked.

Q Never asked to make a phone call?

A Later on that morning, he did make a phone call to his wife.

Q Are you positive of that?

A Yes, sir.

Q Did you make any notations concerning the interrogation at the precinct?

A Yes, I did.

Q May I see them, please?

A Yes, sir.

MR. WEINGARD: With your Honor's permission, sir.

THE WITNESS: Your Honor, I have certain sheets of paper that are covered up, I would request that they not be looked at.

MR. WEINGARD: Perhaps if the Court wishes the Court could look at it and see what is relevant and then just allow me to look at those things that the Court feels is bearing upon the interrogation.

THE WITNESS: There is matters in here, your Honor, which have absolutely nothing to do with the investigation with the Secret Service, but they have to do with the homicide investigation and --

THE COURT: You are not required to produce those.

MR. WEINGARD: I am just interested.

THE WITNESS: They are in this book and I have them covered up.

MR. WEINGARD: May I see those that are not?

THE WITNESS: This is as of the statement he

gave me.

MR. WEINGARD: Thank you.

(Pause.)

Q Officer, if I were to turn this page over, there is no problem with the opposite page, is that correct? I don't want to turn any page.

A May I look at it first?

Q Yes, please.

(Pause.)

A No, there is no problem with that page.

Q All right, may I see it, please?

(Pause.)

During the course of your questioning Mr. Warme relating to his whereabouts on the preceding day, you say that he made a statement to you right away and cooperated in that regard, is that correct?

A Yes, he did.

Q Did you make any reference to the fact that there was a dying declaration on the part of the deceased?

A To him? No, I did not.

Q You made no such statement?

A No.

Q Did you make any reference to the fact that if he didn't cooperate with you you were going to turn him

over to the federal authorities the FBI Secret Service or any other federal agency?

A At that time I had no knowledge that they were interested in him.

Q You had no knowledge that they were interested in him?

A That is correct, yes.

Q At that point?

A As to him himself, I knew he was involved but I had no knowledge that they were looking for him.

Q But you knew that there was an investigation by the federal authorities relating to counterfeit?

A Yes, I did know that.

Q Did you make any reference to him about that?

A No, I did not.

Q You are positive about that?

A Absolutely.

Q These notes in this pad that you have handed to me, are these the only notes you made on that evening?

A That is correct.

Q Did you write them out exactly as they were happening?

A As close as I could as he was giving me his statement.

Q Or did you make some notations and then transcribe those notations into this book?

A I believe I just wrote them in that book, that is what I usually do as close as I can,to the person who is talking to me, I try to write them.

Q You say that after you first made this, you tried to go over the statement again, correct?

A Yes, we talked about it, different aspects of the statement.

Q Was there something that you believe was incorrect?

A No, I was just checking his story against this original story.

Q Did you make some original investigation that day by going out and seeing other people?

MR. NAFTALIS: Objection, your Honor.

THE COURT: Sustained.

Q Did you have any occasion to have anybody confront him in the stationhouse? Any potential witnesses?

A No, sir.

Q Did you tell him that you knew he was the person who shot Angelo Oliveri?

A No, sir.

Q You made no such references at all. You just

took his alibi statement without any attempt to in any way descredit it?

A How can I descredit that by just talking to him? I would have to discredit his statement by interviewing certain people who he says he was with.

Q Did you at any time try to discredit his statement in conversation with him at the precinct stationhouse?

A Oh, yes, we spoke about his certain statements but he never changed them so I could not discredit them.

Q So that is your purpose. To try to have him change his original statement,his original alibi statement during the course of your interrogation?

MR. NAFTALIS: Your Honor, I am going to object. We are getting into this Oliveri murder business.

MR. WEINGARD: Not at all, with all due respect I am trying to find out what kind of interrogation took place.

THE COURT: Come, come, come, will you? I don't know what you are trying to find out. Answer the question and let's go on.

THE WITNESS: Would you repeat your question, please.

MR. WEINGARD: May we have it reread?

(Question read.)

A That was not my purpose, to have him change his statement. My purpose was to see if he repeated the same statement or if he changed it himself. It was not my purpose to try to make him change his statement.

Q How long was he in the precinct, from what time to what time?

A Approximately from ten minutes to 4:00 when we arrived, until approximately 11:00 o'clock that morning when he left for the Secret Service.

MR. WEINGARD: No further questions.

MR. NAFTALIS: No cross, your Honor.

THE WITNESS: Thank you, your Honor. May I have back my --

MR. NAFTALIS: I will give it to you.

THE COURT: Is that all?

MR. WEINGARD: That is all of this witness, Judge. I have no other witnesses except perhaps with the exception of my client.

THE COURT: What do you mean perhaps, put him on if you are going to put him on.

MR. WEINGARD: Do you wish to go on?

THE COURT: I wish to continue.

MR. WEINGARD: May I have a moment to talk to him first?

THE COURT: Take a moment.

MR. WEINGARD: I call Richard Warme.

R I C H A R D G. W A R M E, called as a witness, being first duly sworn, testified as follows:

THE CLERK: Please be seated and state your name.

THE WITNESS: Richard Warme.

THE CLERK: Your address, please.

THE WITNESS: 1059 Brinsmade Avenue, Bronx, New York.

DIRECT EXAMINATION

BY MR. WEINGARD:

Q Mr. Warme, you were taken into the 46th Police Precinct in the Bronx on March 1, 1976, is that correct?

A Yes.

Q That was at approximately what time and under what circumstances, please?

A They came to my house, the Homicide Squad at 3:00 o'clock in the morning. They knocked on the door, I went down I answered it, I put my dog away. They came in and they said, "We want to question you."

I says, "About what?"

They turned around and they said, "Well, we will

tell you when we get you where we are going."

I said, "Well, do you have a warrant for my arrest or what is the story?"

So they wouldn't tell me exactly what it was all about. So they says, "Well, you come with us either by force, willingly or we are going to force you to come."

They said, "We will wake up all your children in the house and we will force you to come with us and take your family down and everything to that effect," you know. So I said, "Okay, I will go with you."

I didn't want to create a disturbance or anything with the neighbors in the neighborhood. So I got outside and two officers had pistols out and there was two officers from the Irvington Police Department with two shotguns and I said, "Well, what is going on?"

They says -- am I being arrested? He said, "No, we just want to question you."

I said, "What is all these people around here there are about 12 cops." They had the house surrounded. So I said, "This is for questioning or am I under arrest?" I said, "Will you let me know now?"

They said, "No, we just want to question you"and they just started pulling me away. They pulled me away through in the car. One sat in the back and one drove

in the front.

Q Before we leave, while you were leaving your house, you say there were two policemen with pistols. Were those the detectives?

A I says, "I am not going with you."

In other words, he says, you come with us willingly or we are going to force you to come. So I said, "Well, I am not going anywheres." They took out pistols and they said, "We will force you to come if we have to."

I said, "Okay. What am I going to say."

My wife is upset, it is 3:00 o'clock in the morning, so I went with them.

Q All right.

Now on the way down to the 46th from Irvington to the Bronx, was there any conversation between yourself and the police officers?

A They asked me where I was, who was I with, where was I last night. You know, a bunch of questions. Most of the interrogation or whatever questioning took place in the police station once they got me there.

Q When you were in the automobile, did anybody tell you that you had a right to remain silent?

A No, nobody told me anything at all about rights.

They just said they wanted to question me and I said "Why are you forcing me to go with you?"

I said, "I will drive my own car down."

They said,"No, you are coming with us."

And my car remained, they took the keys, then they went in and questioned my wife. Two other officers remained up there and they questioned her and other officers took me away.

Q When you got down to the 46th Precinct, what happened?

A They took me upstairs to the second floor, they put me in a room and they started asking me questions about somebody named Buckley.

Q Did the mean anything to you?

A I said no, I don't know anybody they were questioning me about. It was about two hours. Then they said, "Do you know somebody named Angelo Oliveri." I said, "I know the fellow about 15, 20 years." I said, "We were in business together, we do work together," and so forth.

Then he turned around and he said, "Do you know that Angelo was shot," and I was shocked. I said, "No, I don't know he was shot."

So he turned around and he says, "Well, he claims

that you did it."

So I said, "What do you mean he claims I did it?"

I says, "I will go right in front of him and to his face and deny it."

He says, "Well, that is what we are going to do, we will take you to the hospital."

MR. NAFTALIS: Your Honor, I am going to object to this whole area. We are getting into something that has nothing to do with the counterfeiting charge and what happened with the Secret Service. This is highly irrelevant.

THE WITNESS: Go ahead.

MR. WEINGARD: May we proceed, sir?

THE COURT: I merely want to call to your attention that you may be treading on dangerous ground in your client's interests. The degree to which his testimony is not usable pertains to the relevancy and materiality to the instant proceeding and you have already brought out and otherwise been informed that there are other proceedings contemplated in other jurisdictions and you may wish to consider whether your [illegible] eliciting this type of testimony may or may not be usable in that other jurisdiction.

It is of no consequence to me on the suppression motion, but you may be unwittingly or otherwise involving

your client in something that he should be giving second thoughts to.

MR. WEINGARD: Your Honor --

THE COURT: You may proceed at your peril.

MR. WEINGARD: Just so that the record is clear, we find ourselves --

THE COURT: The record with me is clear. I have nothing at all to do with any other proceeding.

MR. WEINGARD: I understand that, Judge, but so that the record is clear from my point of view, we find ourselves on the horns of a dilemma as so aptly pointed out in the Simmons case in the Supreme Court of the United States. This is one of those very awkward areas where in order to demonstrate the type of coercive behavior that was imposed upon the client --

THE COURT: No coercive behavior thus far discussed by anybody on your side of the case relating to the suppression that you are seeking. You are talking about other coercive behavior which may or may not cause you to founder in some other proceeding.

MR. WEINGARD: All right, sir. Perhaps I can circumscribe his testimony somewhat. Let me see if I cannot.

Q Without going through what you said precisely

concerning the facts of the interrogation to the detectives, did there come a point during the course of the questioning when you asked for some sort of assistance or sought to stop the questioning?

THE COURT: Are you talking before the Secret Service arrived?

MR. WEINGARD: Yes, sir.

THE COURT: We are not interested in that.

MR. WEINGARD: Judge, I propose to ask him whether or not he requested a lawyer's presence at the precinct stationhouse.

THE COURT: That has to do with whether I wanted a lawyer for a state court proceeding. Having nothing to do at all with this federal matter.

MR. WEINGARD: As an offer of proof, Judge, I would indicate --

THE COURT: I don't want any offers of proof because that is your testimony. I want the witness' testimony. Now you ask questions.

MR. WEINGARD: Are you precluding me from asking him?

THE COURT: I am not precluding you. I am warning you that this man has rights in another court that you may be trampling on. Now from there on, it is

on your own responsibility.

MR. WEINGARD: All right, sir. I think I understand what the Court is saying.

Q Mr. Warme, there came a point when special agents of the Government, the Federal Government, arrived at the 46th Precinct, is that correct?

A Yes.

Q When they arrived at the 46th Precinct, where were you?

A I was in a room being questioned.

Q Did there come a point when you were placed under arrest by those special agents?

A Yes.

Q Where did that occur?

A In the 46th Precinct.

Q Under what circumstances, please?

A I don't know what you mean by that question.

Q Describe exactly what happened?

A Well, I have been in this 46th Precinct from 3:00 o'clock in the morning until the next day, 11:00 o'clock, and I asked the officers there to please put me in a cell, that if you are not going to arrest me, lock me up, let me go. They just kept me, then they kept talking on the phone to some federal officers. They kept

saying, well, you know, if you don't cooperate --

Q Mr. Warme, Mr. Warme --

A I don't know what questions you are asking me.

Q Listen to me carefully, the Judge has cautioned that there may be a problem with respect to your state case if we go through all of the incidents relating to the interrogation there. I am telling you now that I intend to just cover the circumstances relating to the federal arrest. Do you understand me now?

A Well, I can tell it in my way, I was being held against my own will and they are on the telephone with the Government officials or whoever, they kept telling me "If you don't cooperate with us, we are going to turn you over to the Secret Service." And that is what they told me.

They waited for the Secret Service. They came and arrested me.

Q When the Secret Service arrested you, tell us what happened?

A They made me strip down, they gave me my rights, and they told me to strip down. They said, "You are coming with us."

They handcuffed me behind my back, they took me outside to a yellow Camaro, threw me in the back seat backwards. The cuffs were so tight that they kept asking

me questions. I said, "Could you please take these handcuffs off or handcuff me in a different way." The car was so small and they, you know, had them behind my back. My hands were blue when I was up there. Then they took me into some building I didn't even know where I was. It was so many hours. After being interrogated up in the Bronx, then the FBI and by six other people.

MR. NAFTALIS: Objection, your Honor.

THE COURT: Let him go ahead.

Q Just stop here. You said a while ago that after they told you you were under arrest at the 46th Precinct, they told you your rights, is that correct?

A Yes.

Q They told you you had a right to an attorney and a right to remain silent, et cetera, is that correct?

A They just said you have the right to you know, whatever they read in some piece of paper.

Q All right. At that time did you make any statements to them?

A I never made any statement. I have been asking from 3:00 o'clock in the morning on, can I please call an attorney. And they didn't give me no water and this officer said they gave me coffee, they didn't give me nothing.

Q When the Secret Service agents advised you of

your rights, did you tell them you wanted to make a statement or did you tell them you didn't want to make a statement?

A They came and they told me that, "You are dead," they got you on homicide," this and that,"you better cooperate with us"when they were driving me downtown.

I said, "I have nothing to say."

I says, "I didn't do anything, I am not guilty of anything."

They said, "If you don't cooperate with us, the state has you," this and that,"You are going to go away for 25 years. You got 20 years you are facing on this charge," and you know, numerous amount of things.

Q Who said that to you, if you recall?

A Officer Vezeris, whatever his name is and that Mr. Hemmer there.

Q That was in the automobile?

A Yes.

Q When you got down to the World Trade Center, did something occur at that time?

A I didn't even know where I was. They had me in the car, I was upside down in that little car and they put a car in the building, the garage door opened, I ended up -- they dragged me out by my feet to get me out of the car because I couldn't lift myself up.

I was handcuffed behind myself.

Q Just so that we understand, you were laying in the back seat of the car?

A Right.

Q Nobody had struck you or beaten you at that time, had they?

A No, just that the handcuffs were so tight.

Q You couldn't get out of the back seat, correct?

A I was laying backward, you can't lift yourself up.

Q And you were dragged out of the automobile?

A They couldn't lift me up because of my weight so they dragged me out by my feet, I imagine, I don't know.

Q Then what happened?

A Then I went up on an elevator to some floor which I still don't know. I was half asleep from being up all night and all morning with all these questions and everything.

Then they took me into an office and I asked them again can I make a phone call, they said you will make your phone call in due time. You will get your chance to make your phone call.

I said, "Okay."

They sat me in a room and then some people came by in this two-way mirror. I could see the shadow. And they

were looking in at me.

Q Who told you that you would get your chance for a phone call in due time? Who said that to you? Which of the two other agents?

A Mr. Vezeris.

Q Then what happened?

A Then they sat me in a chair and they handcuffed me one hand to the chair, my right hand to the chair in the office. They went outside and they were talking with different officers or something.

Q Stop right here.

Had you slept at all up until this time?

A No.

Q Had you eaten at all up to that point?

THE COURT: What did you do up until 3:00 o'clock in the morning? Were you walking around your house?

THE WITNESS: No, I was sleeping, your Honor.

THE COURT: What do you mean you hadn't slept at all?

THE WITNESS: I mean from 3:00 o'clock in the morning.

THE COURT: You hadn't slept from 3:00 o'clock in the morning?

THE WITNESS: Right.

THE COURT: But you had been asleep the previous night?

THE WITNESS: Yes, I was.

Q Go ahead. What happened then, you were handcuffed to the chair and then what?

A Then the agents came in and they asked me to cooperate with them. They says, "If you cooperate with us, we will make sure you get out on bail," and you know, we will put you back in the street.

I said, at that time I said I didn't have anything to say. They told me that I am going to go away for all these years. I said I have nothing to say. They said, "Do you know Bernard Horwitz?" I said, Yes, I do."

They said, "For how long?"

I said, "Eight years."

They said, "Did you ever do any business with him?"

I said, "Sometimes I do business with him." I deal in a lot of salvage, sometimes he bought things from me. He was like a peddler he would sell sunglasses and shoes and what have you. He used to buy a lot of things from me. He used to work in a large factory and I used to buy lamps through his boss. Then they asked me if I knew Joe Peters, I said I did know Joe Peters. He was

working for me out in Montauk.

They said, "Did you ever give him any money or anything?"

I says, "Yes, I did."

They says, "How much did you give him?"

I said, "I give him a check for $500."

They said, "For what reason?"

I said, "He had no money for Christmas." He wanted to buy his mother a television. Going back to Bernard Horwitz the agents told me that they had a confession from Bernard Horwitz that I gave him $100,000 in counterfeit money to fly to Las Vegas with.

I said I never gave him no $100,000. I said Mr. Bernard Horwitz told me he was going to meet a friend of his, Art Resnick, and asked me to lend him the money to fly to Vegas, that he was going to borrow money or he had some business transaction with this Art Resnick, which I in turn wrote him out a check to TWA Airlines and Joe Peters was with me at the time and we took him to the airport.

He got on the plane and flew to Vegas, I believe. I didn't check what exact plane he went on.

Q During the course of this particular conversation that you are describing, you were still seated in that chair

in the interrogation room, correct?

A Yes.

Q Did you ever go out of that room into another room?

A No.

Q Did you have any occasion during the course of that first interrogation to ask for a lawyer?

A I asked when I first went there for a lawyer.

Q Did you have any occasion to repeat your request for a lawyer during the course of that interrogation?

A I asked every five minutes when can I call my attorney? "You will call him, you will call him."

The only reason my attorney was there was because my wife brought an attorney down. I was never permitted to make a phone call. I never made any phone call at all.

Q Continue. What else did they ask you? What else happened?

A Then they asked me what my connection was with Angelo Oliveri and they said they had a statement from Angelo Oliveri that I sold him counterfeit money. At that time I told him I didn't sell any counterfeit money to Angelo Oliveri.

They asked me ow long I knew him and so forth and that line of questioning. They kept repeating that you can help yourself by this statement. Then they took

my wallet from me and they took everything out of the wallet and then they asked me about people's names that were in the wallet, you know, who is this one, who is that one, and I told them the names of each individual person that they questioned me about.

Q When you were in the automobile, when you got down to the office, had you again been advised on either of those occasions of your rights?

A Only in the 46th Precinct in the Bronx.

Q That is the only time?

A Right.

Q Continue.

A In fact, to be honest with you, that Agent Vezeris came up with Oliveri to Mt. Vernon which I didn't even know him at that time. Anyway, what was the question?

Q The question was during the course of the interrogation in the room, what happened? You were saying that they mentioned Angelo Oliveri to you?

A They mentioned Angelo Oliveri, they said, "What were your dealings with him," they told me that the state has me dead to right, you know, all the evidence, you know. "Tight case, and you are finished. You are going away for the rest of your life. Tell us everything, you know. Cooperate with us."

So I said, "I have nothing to say."

I said, "Put me in a cell," I says, "I am beat already from all these questions and answers,"you know, I was dizzy.

So then they took my wallet away and they asked me about people that were, you know, names, personal people, and they went away with the wallet and they took photographs because I seen them, they came back mimeographs or something, you know, Xerox copies, or something.

Then they gave me all my property back, when my attorney arrived they gave me all the property back.

They says, "You have to sign this paper here that you received," you know, check everything out.

"Check your wallet, all the papers."

I checked the papers,they gave me a piece of paper to sign and I signed it.

Q Did you read that piece of paper before you signed it?

A No, I never read anything.

Q I beg your pardon?

A I never read the paper.

Q What did you understand it to be?

A When he gave me my property back he said, "You have to sign this piece. Check the contents of your

wallet, make sure all your papers are there and everything," and I checked everything and I put it in -- back in my wallet. And he says, "You have to sign this that you got your property back." And I signed the piece of paper.

The next thing I understand I signed a waiver of my rights or whatever it is. I don't even know what a waiver is. If somebody told me, no, now I understand.

Q Mr. Warme, did anybody while you were in the room at the office?

THE COURT: You said you don't know what a waiver of your rights is?

THE WITNESS: I don't understand now. I didn't understand that, you know, at the present time, I mean if somebody mentioned it to me I wouldn't even understand it because I was so confused.

THE COURT: I thought you testified that at the 46th Precinct when you first saw these federal agents, they told you of your rights?

THE WITNESS: They gave me -- I don't know what they --

THE COURT: They read a statement to you of your rights?

THE WITNESS: Yes, they said you have the right

to remain silent, you are under arrest, you have the right to remain silent.

THE COURT: You understood you were getting your constitutional rights at that time?

THE WITNESS: Right. I understood what they meant.

THE COURT: And this paper that you signed is the same statement of those rights?

THE WITNESS: I never read any paper.

THE COURT: What is that?

THE WITNESS: I never read the paper that I signed.

THE COURT: You read English, don't you?

THE WITNESS: Yes, I do.

THE COURT: What is the extent of your education and schooling?

THE WITNESS: 12th grade.

MR. WEINGARD: May I proceed now, Judge?

THE COURT: Yes.

Q So that it is your testimony that you did not read the waiver of rights form or consent form that they put in front of you, is that correct?

A Right.

Q That they told you that that was a receipt which

they needed in order to give you back your property, is that correct?

A Yes, I only remember that they gave me my wallet and they says check the contents of your wallet and make sure everything is there, and I put it in my pocket, they said everything is there.

They said, "You have to sign this acknowledgment that you received your property back. I never looked at the paper or anything, all I was just glad to get out of there because I found out the attorney was there and I would have signed anything at that time, you know, because my head was -- I had a headache and everything with all these questions all day lon from nighttime to the daytime.

THE COURT: You didn't sign the statement that the stenographer brought in?

THE WITNESS: Yes, because they gave me a statement and they brought it back to me all typed out and the attorney wasn't present and they told me to read it. And I read the statement and I refused to sign it because I told them whatever is in that statement isn't true. I said I never said that.

THE COURT: When they brought that statement back that was the same time they gave your wallet back, wasn't it?

THE WITNESS: No, it wasn't, your Honor.

THE COURT: What was the time sequence?

THE WITNESS: I can't remember right now.

THE COURT: When did you get your wallet back, before the stenographer was in the room or after the stenographer came back?

THE WITNESS: The statement was made up before I signed anything for my wallet at all.

THE COURT: Yes.

The statement was made up.

THE WITNESS: Right.

THE COURT: And they brought it back and you read it?

THE WITNESS: It was a stenographer that came in the room while they were questioning me.

THE COURT: Yes?

THE WITNESS: They asked me if I knew Bernard Horwitz, if I knew James Heimerle, they showed me a picture of James Heimerle, I said yes, I recognize the picture of James Heimerle.

They said, "Did you ever have anything to do with this?"

I said, "I only had social dealings with him."

"Did you see him in the Irvington Bank?"

I said, "Yes, I did."

"Who was present?"

"Joe Peters was present and myself."

Then ten minutes later, the stenographer left the room or 15 minutes later, and she came back, or they sent her out to type something. Then she came back and she gave it to one of the agents. He read it to me and I refused to sign it. He didn't ask me to sign it at that time.

I said, "That is not what I told you."

He says, "This is what we have." And then he gave the statement back to the girl again and sent her back to retype something else.

He changed some words around or something. She went out and she retyped it again and he read it to me and I refused to sign it at that time and I asked for an attorney again.

So he -- whatever he said, "okay, you want to be smart, it is your statement," he said, "Don't sign it."

Now maybe a half hour or 20 minutes had passed my attorney arrived, they let me speak to my attorney. Then there is the time that they gave me that piece of paper to sign my -- for my wallet, was after this statement, it wasn't before the statement.

MR. WEINGARD: No further questions.

THE COURT: So you say you signed this so-called receipt after all of these statements were going back and forth and the stenographer was going back and forth and after you had spoken to your attorney?

THE WITNESS: I signed the waiver before or whatever that piece of paper was, before I spoke to my attorney.

THE COURT: I thought you said you refused to sign the statement, you spoke to your attorney and then they gave you your property back?

THE WITNESS: No, I didn't say that, your Honor.

MR. WEINGARD: Let me see if I can clarify it, Judge.

THE COURT: Go ahead.

BY MR. WEINGARD:

Q So that we understand, did you ever make a phone call from the office?

A No, I didn't.

Q Please listen to me.

Did you ever make a phone call from the office to an attorney or to your wife?

A Not from -- no.

Q Did they ever allow you to make that telephone call?

A No.

Q They kept postponing it according to what you said, correct?

A Correct.

Q Your testimony is that after the stenographer left and you were presented with the statement and declined to sign it because it was not what you had been saying, then subsequently they came in with your wallet and the contents of your wallet and this particular piece of paper, is that correct?

A Right.

Q Was your attorney present at that time?

A No.

Q Do you know approximately how long after the attorney arrived?

A I was still sitting in the office and the other fellow came in. Mr. Heavey was the name? The other agent.

Q You mean the supervisor?

A Yes. He came in and he asked me why I refused to sign the statement. I told him that what is in the statement isn't exactly what I had told the agents. I says, they changed things around to their own, whatever, I said that is not exactly what I said.

So he says to me, "Well, you know, you will get

yourself -- in other words, he told me that, "If you cooperate, if you do this here, everybody signed the statement against you, and if you sign the statement it doesn't make any difference." They said James Heimerle is away since February 6th,"he signed the statement against you"and Bernard Horwitz and Joe Peters and everybody else signed a statement against me.

So I refused to sign a statement with him. Then the attorney appeared, maybe ten minutes after Mr. Heavey spoke to me and they let me go talk to the attorney.

Now I asked the attorney, I says, "They want me to sign the statement."

I said, "But I would like you to take a look at it."

Then he asked for the statement, but the Secret Service never gave him the statement or never presented it to him or never showed it to him.

Q But you had declined to sign it before the attorney arrived or before you ever spoke to an attorney, is that correct?

A Correct.

MR. WEINGARD: No further questions.

THE COURT: Is there any cross examination?

MR. NAFTALIS: None, your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. WEINGARD: Defendant rests on the motions.

THE COURT: Any rebuttal?

MR. NAFTALIS: No rebuttal.

THE COURT: The Court's findings are as follows:

After receiving full advice repeatedly of all his constitutional rights and the circumstances right from the outset and throughout the proceedings, and prior to any interrogation after having been advised of these rights and including without limitation his right to remain silent among other things, and also after signing a waiver of his rights, Exhibit 1, the defendant voluntarily and free of any coercion or duress of any kind made the oral admissions of his complicity subsequently furnished the information taken down by the stenotypist as recorded on Exhibit 2.

The disputed issues of credibility are resolved against the defendant on the basis of the evidence, the probabilities, the circumstances and the evaluation of the demeanor evidence. Suppression of the confessions is in all respects denied.

So ordered.

MR. WEINGARD: Exception.

THE COURT: This case will go to trial following immediately the case that is on trial on Tuesday known as USA against Nachman & Cohen.

The Nachman & Cohen case is a relatively short case so that you can expect to be reached for trial in this case probably to pick a jury Wednesday afternoon.

MR. WEINGARD: Your Honor, I am committed for Tuesday and Wednesday. I will be available first thing Thursday morning if the Court will --

THE COURT: We will try to work out your problem.

MR. WEINGARD: It is a firm commitment, Judge, and there is no way I can be available on Tuesday or Wednesday. It is a hearing that has been scheduled for the better part of one month.

THE COURT: We will hold the case ready for you for Thursday morning.

MR. WEINGARD: That is fine, Judge.

Will your Honorremain available for a few more minutes?

THE COURT No.

MR. WEINGARD: There may be a disposition if your Honor will permit us a few minutes at this point.

(Recess.)

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MR. WEINGARD: Your Honor, we anticipated the possibility of a disposition, but because of various problems not so much the willingness on the part of my client in disposing of the matter, but rather apparently the way in which inquiries will be made of him, that poses a difficulty and at this time we can't make an application to go forward; so we will be available to the Court as of Thursday as indicated, Judge.

THE COURT: Very good.

MR. NAFTALIS: Your Honor, if I may with respect to the actual court date of this trial.

THE COURT: You check with your lawyer. I think it is Jeremy Epstein, Jeremy Epstein's case.

MR. NAFTALIS: Okay, your Honor.

THE COURT: Nachman & Cohen.

MR. NAFTALIS: The Government only wishes to make one inquiry in that it personally affects Government counsel and I believe it will also affect both counsel for Heimerle and Warme.

THE COURT: We start basically Thrusday and go over to Monday.

MR. NAFTALIS: Very good, your Honor, thank you.

MR. WEINGARD: Thank you, sir.

(Adjourned.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
John Vezeris	2	17		

EXHIBIT INDEX

Government	Identification	In Evidence
1		11
2		50

2 Copies Received

Date August 15, 1977

Firm Hon. Robert B. Fiske, Jr.

By _____

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